

VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [REDACTED] 1964

N [REDACTED] 48

**UNITED MINE WORKERS OF AMERICA
PETITIONER,**

vs.

JAMES M. PENNINGTON, ET AL

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

**PETITION FOR CERTIORARI FILED MARCH 17, 1964
CERTIORARI GRANTED MAY 18, 1964**

Joint Appendix

IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

No. 14,809

JAMES M. PENNINGTON, RAYMOND E. PHILLIPS
and LILLIAN GOAD PHILLIPS, Admr. of the
Estate of Burse Phillips, deceased,
Cross-Plaintiffs-Appellees,

v.

UNITED MINE WORKERS OF AMERICA,
Cross-Defendant-Appellant.

No. 14,810

JOHN L. LEWIS, HENRY G. SCHMIDT and
JOSEPHINE ROCHE, as Trustees of the
UNITED MINE WORKERS OF AMERICA WELFARE AND
RETIREMENT FUND,
Plaintiffs-Appellees,

v.

JAMES M. PENNINGTON, RAYMOND E. PHILLIPS
and LILLIAN GOAD PHILLIPS, Admr. of the
Estate of Burse Phillips, deceased,
Defendants-Appellants.

Appeals from Judgments and Orders of the United States District
Court for the Eastern District of Tennessee, Northern Division

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IN THE
United States Court of Appeals
FOR THE SIXTH CIRCUIT

No. 14,809

JAMES M. PENNINGTON, RAYMOND E. PHILLIPS*
and LILLIAN GOAD PHILLIPS, Admrx. of the
Estate of Burse Phillips, deceased,**
Cross-Plaintiffs-Appellees,

v.

UNITED MINE WORKERS OF AMERICA,
Cross-Defendant-Appellant.

No. 14,810

JOHN L. LEWIS, HENRY G. SCHMIDT*** and
JOSEPHINE ROCHE, as Trustees of the
UNITED MINE WORKERS OF AMERICA WELFARE AND
RETIREMENT FUND,
Plaintiffs-Appellees,

v.

JAMES M. PENNINGTON, RAYMOND E. PHILLIPS*
and LILLIAN GOAD PHILLIPS, Admrx. of the
Estate of Burse Phillips, deceased,**
Defendants-Appellants.

**Appeals from Judgments and Orders of the United States District
Court for the Eastern District of Tennessee, Northern Division**

*On January 16, 1961, an order was entered correcting the name of "Ralph E. Phillips" to "Raymond E. Phillips".

**On September 30, 1960, Lillian Goad Phillips, Administratrix of the Estate of Burse Phillips, deceased, was substituted as defendant and cross-plaintiff in the place and stead of Burse (inaccurately called "Bruce" in the original complaint) Phillips, deceased.

***On August 11, 1958, an order was entered naming Henry G. Schmidt as an additional party plaintiff.

la
Caption

IN THE
United States District Court

FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

CIVIL ACTION No. 3431

JOHN L. LEWIS and JOSEPHINE ROCHE, as TRUSTEES of the
UNITED MINE WORKERS OF AMERICA WELFARE AND RE-
TIREMENT FUND.

HENRY G. SCHMIDT, Trustee (amended 8-11-58), *Plaintiffs,*

VS.

JAMES M. PENNINGTON, RALPH E. PHILLIPS and *BRUCE
PHILLIPS, Individually and trading as PHILLIPS
BROTHERS COAL COMPANY, A Partnership,**

*LILLIAN GOAD PHILLIPS, Admrx, as defendant and cross
plaintiff in the place and stead of Bruce Phillips (sub-
stituted 9-30-60) *Defendants,*

VS.

UNITED MINE WORKERS OF AMERICA,

Cross Defendant

**The name of "Ralph E. Phillips" was corrected to "Raymond E. Phillips" on January 16, 1961.

*Relevant Docket Entries***Relevant Docket Entries**

1958

Jan. 6 Complaint filed.**Feb. 14 Answer of defendants, counterclaim, and cross-claim against plaintiffs and United Mine Workers of America, filed.****Feb. 19 Order that summons be issued for service upon the United Mine Workers of America, entered in Civil Order Book 14 page 284, and filed.****March 5 Amendment to Answer filed.****March 14 Motion of Cross-Defendant, United Mine Workers of America, to dismiss the cross-claim, filed.****March 17 Motion to Vacate Order Granted under Rule 13(h) and to Dismiss the Cross-Claim as to the plaintiff Trustees filed.****March 17 Plaintiffs' Answer to Counter-Claim filed.****March 24 Motion to amend the answer, counterclaim and cross-claim filed by the defendants, filed.****June 2 Motion to add a party plaintiff, filed.****Aug. 11 Order that Henry G. Schmidt be named additional party plaintiff without prejudice, entered in Civil Order Book 15 page 319, and filed.**

1959

June 26 Additional Motion to Amend the Answer, Counter-claim and Cross-Claim filed by the Defendants, filed.**July 2 Order that the motion to dismiss filed by the cross-defendant, United Mine Workers of America, is overruled except with respect to grounds Numbers V and XI, which are sustained; the Cross-defendant, UMW is given leave to renew at the pretrial conference, without prejudice, the grounds in said Motion to**

Relevant Docket Entries

Dismiss numbered III, IV, VI and VII; the motion of the plaintiffs filed March 17, 1958, to vacate the order granted under Rule 13(h) and to dismiss the cross-claim as to the plaintiff Trustees, is denied but the right is reserved to plaintiffs to renew such motion at the time of the pretrial conference. The motions of the defendants and cross-plaintiffs to amend the answer, counterclaim and cross-claim, filed on March 24, 1958 and June 26, 1959, are allowed and the amendments proposed in said motions shall be considered as having been added to and made a part of the pleadings referred to in said motions. The cross-defendant, UMW is allowed 15 days from June 30, 1959, to attempt to work out a stipulation with respect to the motions of defendants and cross-plaintiffs for the production of documents for inspection, copying or photographing, or to file objections to said motion but the cross-defendant, UMW, is urged to comply with this portion of the order within 10 days if reasonably possible, entered in Civil Order Book 17, page 158, and filed.

Aug. 15 Answer of the United Mine Workers of America to the amended cross-claim filed against it and others, filed.

1960

July 6 Motion for Partial Summary Judgment filed.

Aug. 8 Reply of defendants and cross-plaintiffs to plaintiffs' motion for partial summary judgment, filed.

Sept. 13 Motion of the Cross-Plaintiffs, James M. Pennington, et al, to Amend the Cross-Claim or Counter-Claim in this case to specify the period of time encompassed by the Cross-Claim or Counterclaim, filed.

Sept. 30 Order substituting Lillian Goad Phillips, Admrx. as defendant and cross plaintiff in the place and

Relevant Docket Entries

stead of Burse Phillips entered in Civil Order Book 19, page 453, & filed.

Nov. 25 Order granting plaintiffs to file an answer to the counterclaim as amended, such answer to stand in lieu of answer heretofore filed, entered in Civil Order Book 20, page 89, & filed.

Nov. 25 Amended answer to counterclaim filed.

1961

Jan. 16 Agreed Order that the record show the correct name of the defendant and cross plaintiff to be Raymond E. Phillips, entered in Civil Order Book No. 20, page 194, and filed.

April 5 Motion of defendants for an order consolidating the claim of plaintiffs against defendants and the claim of cross plaintiffs against the cross defendant, for trial and dismissing the claim of cross plaintiffs against the cross defendant, filed.

April 6 Response of United Mine Workers of America to Motion of defendants and cross-plaintiffs to dismiss their claim against the plaintiffs and to consolidate plaintiffs' case with cross-plaintiffs' claim against United Mine Workers of America and Motion to Dismiss, filed.

April 6 Objections of the plaintiff trustee to the entry of an order consolidating the claim asserted by the Trustees in this action with the cross-claim asserted by the defendants against the cross-defendant, United Mine Workers of America, filed.

April 10 Order that the claim of cross-plaintiffs, James M. Pennington, et al. against cross-defendants, John L. Lewis, et al, Trustees of UMW of America Welfare and Retirement Fund is dismissed; (2) claims of plaintiff, John L. Lewis, et al. in the original com-

Relevant Docket Entries

plaint against defendants, James M. Pennington, et al. and of the cross-plaintiffs James M. Pennington, et al against cross-defendant, UMW of America, are consolidated for trial, the issues to be decided by the jury; (3) Motion of cross-defendant, UMW of America to dismiss this action is hereby overruled; The exception of the plaintiff Trustee to the action of the Court in consolidating the cases as noted in paragraph 2 hereof is hereby noted and reserved; the exceptions of the cross-defendant United Mine Workers of America to the consolidation of the cases as noted in paragraph 2 hereof and to the action of the Court in overruling its motion to dismiss filed on April 6, 1961, are hereby noted and reserved, entered in Civil Order Book 20, page 495, and filed.

April 10 Order Pursuant to Pretrial, Filed.

May 29 Motion of United Mine Workers of America for Judgment in Accordance with Motions for Directed Verdict or in the Alternative Motion for a New Trial, filed.

May 29 Motion of John L. Lewis, Henry G. Schmidt and Josephine Roche, as Trustees of the United Mine Workers of America Welfare and Retirement Fund, for Judgment in accordance with Motions for Directed Verdict or in the Alternative Motion for a New Trial filed.

June 20 Petition of Cross-Plaintiffs, James M. Pennington, et al, for allowance of attorneys' fees, filed.

June 20 Affidavit of John A. Rowntree in support of petition of Cross-plaintiffs, James M. Pennington, et al, for attorneys' fees, filed.

June 20 Affidavit of Claude K. Robertson in support of petition of cross-plaintiffs, James M. Pennington, et al, for attorneys' fees, filed.

Relevant Docket Entries

June 20 Affidavit of Jerome Templeton, attorney for the defendants and cross-plaintiffs, filed.

June 20 Affidavit of Jerome G. Taylor, attorney for the defendants and cross-plaintiffs, filed.

July 31 Motion of United Mine Workers of America for judgment in accordance with motions for directed verdict or in the alternative motion for a new trial, heard by the Court and overruled; Motion of John L. Lewis, Henry G. Schmidt and Josephine Roche, as Trustees of the United Mine Workers of America Welfare and Retirement fund, for judgment in accordance with motions for directed verdict heard by the Court and sustained; the Court found that Phillips Brothers Coal Company, were liable from April 1955 thru 1958 for royalties; further found that said company was not liable from October 1953 to April 1955; Petition of cross-plaintiffs, James M. Pennington, et al. for allowance of attorneys' fees heard by the Court and fixed in the sum of \$55,000.00, entered in Civil Order Book 21, page 157.

August 2 Judgment that portion of verdict of jury be set aside and Court awards the plaintiffs trustees judgment for royalty upon quantity of coal produced for period from April 25, 1955 to and including December 31, 1958, or a total of 108,560.56 tons at the rate of 40¢ per ton, or the sum of \$43,424.22; the Court overruled the motion for judgment notwithstanding the verdict of the jury and in the alternative for a new trial; Order that cross-plaintiffs recover of cross-defendant, United Mine Workers of America, the sum of \$270,000.00, being three times the amount of damages awarded by the jury and that they also recover the sum of \$55,000.00 attorneys fees, making a total of \$325,000.00; further Order dismissing the counterclaim filed against the Trustees by defendants and cross-plaintiffs; also ordered that costs be taxed

Relevant Docket Entries

after the time for appeal expires or after the disposition of cause on appeal; further Ordered that execution issue in favor of plaintiffs-trustees, against defendants for \$43,424.22 and that execution issue in favor of cross-plaintiffs for the sum of \$325,000.00, entered in Civil Order Book No. 21, page 170, and filed.

August 4 Opinion of Robt. L. Taylor rendered from the bench July 31, 1961 that since a general conspiracy was charged such evidence was clearly competent as bearing on the question of whether a conspiracy existed during the crucial period; the Court is of the opinion and holds that the motion of U.M.W. for a judgment notwithstanding the verdict of the jury and the alternative motion of U.M.W. for a new trial, and all of the grounds urged in support of these motions, are without merit and are therefor overruled; there is no substantial evidence to support the verdict of the jury that a majority of the Trustees participated in the alleged conspiracy. There is no evidence that either Miss Josephine Roche or Mr. Henry G. Schmidt or Mr. Charles A. Owen, now deceased, (those being the only parties, except Mr. John L. Lewis, who served the trust fund after 1950), had any dealings with large coal operators from which it could be inferred that they agreed, combined or conspired to stabilize coal prices in the bituminous coal industry in interstate commerce; there is no evidence to support the verdict of the jury that Mr. Lewis, for himself and another of the Trustees, entered into the conspiracy so as to bind the Trustees either individually or in their capacity as trustees or to bind the Trust Fund. It follows as a matter of contract that the Trustees are entitled to recover unpaid royalties due them under the contract signed by Phillips Brothers, but the Trustees are not entitled to recover the royalties that accrued before a

Relevant Docket Entries

majority of the employees of Phillips Brothers became members of the Union. The Court fixes the attorneys' fees in this case at \$55,000.00, filed.

Aug. 28 Notice of Appeal by United Mine Workers of America, cross-defendant, filed.

Aug. 28 Bond for Costs on appeal by United Mine Workers of America, filed.

Aug. 28 Order that pursuant to agreement that execution shall not issue upon judgment during the pendency of appeal, entered in Civil Order Book 21 page 197 and filed.

Aug. 28 Notice of appeal by defendants filed.

Aug. 28 Cost bond on appeal by defendants filed.

Oct. 2 Order extending time 90 days from date of filing first notice of appeal, which was August 28, 1961, entered in Civil Order Book 21 page 260, and filed.

Nov. 21 Certified record on appeal mailed to U. S. Court of Appeals, Cincinnati, Ohio. (Exhibits retained U. S. District Court)

9a

Complaint

Filed January 6, 1958

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

CIVIL ACTION No. 3431

JOHN L. LEWIS and JOSEPHINE ROCHE, as TRUSTEES of the
UNITED MINE WORKERS OF AMERICA WELFARE AND RE-
TIREMENT FUND, *Plaintiffs,*

v.

JAMES M. PENNINGTON, RALPH E. PHILLIPS and BRUCE
PHILLIPS, Individually and trading as PHILLIPS
BROTHERS COAL COMPANY, A Partnership, *Defendants.*

Complaint

I.

Plaintiffs are Trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950, a trust with its residence and place of business at 907 Fifteenth Street, Northwest, in Washington, District of Columbia. Trustee John L. Lewis is a citizen of the State of Illinois. Trustee Josephine Roche is a citizen of the State of Colorado. The Defendants, James M. Pennington, Ralph E. Phillips and Bruce Phillips, are citizens of the State of Tennessee and are engaged in certain coal mining operations in the State of Tennessee, operating as Phillips Brothers Coal Company, a partnership. Defendants are sued in their own right and as partners in the Phillips Brothers Coal Company. The principal place of business of the Phillips Brothers Coal Company is Oneida, Scott County, Tennessee, with its mailing address at Post Office Box 56, Oneida, Tennessee.

II.

The amount in controversy, exclusive of interest and costs, exceeds Three Thousand Dollars (\$3,000.00).

Complaint

III.

The United Mine Workers of America Welfare and Retirement Fund of 1950 was created by the National Bituminous Coal Wage Agreement of 1950.

IV.

Between October 1, 1953 and November 30, 1957, the Defendants, James M. Pennington, Ralph E. Phillips and Bruce Phillips, individually and trading as Phillips Brothers Coal Company, a partnership, of Oneida, Scott County, Tennessee, were engaged in the operation of certain coal mines in and about Oneida, Scott County, Tennessee. On or about October 1, 1953, the Phillips Brothers Coal Company, a partnership, and the United Mine Workers of America entered into the National Bituminous Coal Wage Agreement of 1950 as Amended September 29, 1952. On or about September 8, 1955 said Phillips Brothers Coal Company and the United Mine Workers of America entered into the National Bituminous Coal Wage Agreement of 1950 as Amended effective September 1, 1955. On or about October 22, 1956 said Phillips Brothers Coal Company and the United Mine Workers of America entered into the National Bituminous Coal Wage Agreement of 1950 as Amended effective October 1, 1956. Pursuant to the terms of said Amendment dated September 29, 1952, said Amendment effective September 1, 1955 and said Amendment effective October 1, 1956, the Defendants were required to pay unto the United Mine Workers of America Welfare and Retirement Fund the sum of Forty Cents (40¢) per ton on each ton of coal produced for use or sale.

V.

Between July 1, 1954 through and including November 30, 1957, the said Defendants produced approximately 39,000 tons of coal for use or sale, and as a result thereof, and in accordance with the terms of said National Bituminous Coal Wage Agreement of 1950 as Amended Septem-

Answer of Defendants

ber 29, 1952, said National Bituminous Coal Wage Agreement of 1950 as Amended effective September 1, 1955 and said National Bituminous Coal Wage Agreement of 1950 as Amended effective October 1, 1956, referred to in Paragraph IV of this Complaint, there became due and owing by said Defendants to the Plaintiffs the sum of \$15,600.00. Said Defendants made payment on this amount in the sum of \$1,713.51. Said Defendants made payment on this amount in the sum of \$1,713.51, thereby leaving a balance due and owing by the Defendants to the Plaintiffs of \$13,886.49. The Defendants have neglected or failed to pay such amount.

VI.

Plaintiffs have demanded that the Defendants pay unto them said sum referred to in Paragraph V of this Complaint, but the Defendants have refused and continue to refuse to make said payment.

WHEREFORE, the Plaintiffs pray this Honorable Court to grant them judgment against James M. Pennington, Ralph E. Phillips and Bruce Phillips, individually and trading as Phillips Brothers Coal Company, a partnership, in the amount of Thirteen Thousand Eight Hundred Eighty-six Dollars and Forty-nine Cents (\$13,886.49) with interest, and an additional sum equivalent to Forty Cents (40¢) per ton for all coal produced for use or sale in excess of 39,000 tons covering the period July 1, 1954 through and including November 30, 1957 and subsequent thereto with interest, plus the costs of this action.

Filed February 14, 1958

Answer of Defendants

I.

The partnership referred to in this Complaint is a partnership composed of James M. Pennington, Raymond E.

Answer of Defendants

Phillips, and Burse Phillips. Ralph E. Phillips is not a member of the partnership but is an employee of the partnership, and he responds for the purpose of denying all allegations of the bill, including the averment that he is a member of said partnership.

II.

Respondents are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph I of the complaint respecting the residence of John L. Lewis and Josephine Roche and respecting the residence and the place of business of the Trust therein referred to. Respondents do not admit that plaintiffs have a right under the terms of said Trust agreement to maintain this suit.

III.

The averment in Paragraph II contained respecting the amount in controversy is admitted.

IV.

Respondents are without knowledge or information sufficient to form a belief as to the truth of the averment contained in Paragraph III respecting the time and manner of the establishment of the United Mine Workers of America Welfare and Retirement Fund.

V.

In response to the averments contained in Paragraph IV, these respondents say that the Phillips Brothers Coal Company did execute the agreements therein referred to, but deny that it was the understanding between the parties that respondents were to pay unto the United Mine Workers of America Welfare and Retirement Fund the sum of forty cents (40¢) per ton on each ton of coal produced for use or sale.

VI.

Respondents do not deny the averment contained in

Answer of Defendants

Paragraph V of the Complaint to the effect that respondents produced approximately 39,000 tons of coal for use or sale, but deny that they are indebted to the plaintiffs in the amount alleged.

VII.

And now further responding to the Complaint, these defendants say:

1. That they deny the right of the plaintiffs to maintain this suit alone and show to the Court that the so-called Trust agreement sued upon was a part of the National Bituminous Coal Wage Agreement of 1950, which agreement was entered into by and between respondents and United Mine Workers of America and was, by its express terms, an integrated contract containing the express statement that "this agreement is an integrated instrument and its respective provisions are interdependent and shall be effective from and after March 5, 1950." Accordingly, the United Mine Workers of America is a necessary party plaintiff to this action, particularly so as the provision just quoted affords respondents the benefit of all available rights of setoff growing out of the breach of said contract by said United Mine Workers of America, which rights of setoff are not available should plaintiff Trustees alone be permitted to maintain this cause of action.

2. These respondents plead that the agreements entered into by them and all payments made and action taken thereunder by these respondents were performed by reason of the duress practiced upon them by the United Mine Workers of America. The contracts referred to were executed as a result of a program of terrorism conducted by the United Mine Workers of America in the section in which the defendants' mine was located during the time the United Mine Workers of America, through its members, was, by threats of violence and intimidation, forcing the mines to sign and perform their agreements. These agree-

Answer of Defendants

ments were signed by these respondents because of their knowledge that they would be closed down by the United Mine Workers of America and would not be permitted to operate their coal mine unless said agreements were signed. Accordingly, these respondents plead that said contracts were signed unwillingly and were not in accordance with the will of these respondents but constituted the imposition of the will of the United Mine Workers upon their respondents, which these respondents involuntarily assumed through fear, which deprived them of their self-control in this respect. The fear under which respondents dwelt in signing said contracts, and of which the officers of the United Mine Workers of America had full knowledge, not only constituted a duress of property but duress of person in that the methods employed by the United Mine Workers of America embraced the infliction of bodily punishment upon those who did not adhere to its will.

3. It is shown to the Court that these respondents and the other operators of coal mines in the general community in which said mine was located were engaged in the mining and shipping of coal in interstate commerce and to various agencies of the United States Government, particularly the Tennessee Valley Authority and the Atomic Energy Commission at Oak Ridge, Tennessee. The said contract was forced upon defendants by the plaintiffs for the purpose of restraining the shipment of coal by respondents and other of said coal mines in interstate commerce and to the governmental agencies before referred to. To attain their purpose, the United Mine Workers used coercion, threats and intimidation. The purpose of the United Mine Workers in this treatment of respondents and other small operators was to suppress them to the end that said coal might be supplied by certain large operators who were amenable to the wishes of the United Mine Workers of America. It is shown to the Court that there was cooperation amounting to a conspiracy between the United Mine Workers of Amer-

Answer of Defendants

ica and certain large producers of coal, the purpose of which was to place such financial burdens upon respondents and other small operators similarly situated that could not possibly be paid out of funds realized from the operation of the mine, and thus respondents, being unable to meet the demands, would, either through violence, or action such as this in the courts, be closed down, leaving the business of shipping coal in interstate commerce and to the governmental agencies to the said large coal operators. Respondents were not only placed under the burdens as provided by the contracts before referred to, but the United Mine Workers of America and the large companies hereinbefore referred to continually conspired together to increase the burdens of defendants by increasing the wage scale, both by virtue of modifications of the contracts between said mines and the United Mine Workers of America and by co-operating together in having the Walsh-Healey Act apply to the coal industry and having the minimum wage determined thereunder. After the Walsh-Healey Act became applicable to the coal industry, respondents state on information and belief that representatives of the Wage and Hour Division of the Labor Department of the United States Government co-operated with the United Mine Workers of America in harassing small operators so situated for the purpose of suppressing their business to the end, as stated, that the shipments of coal in interstate commerce and to the agencies aforesaid might be monopolized by the said large operators. It is, accordingly, plead that the United Mine Workers of America, in the entering into of said contract and its conduct aforesaid, was acting in violation of an act passed by Congress known as the Sherman Antitrust Act appearing in 20 Stat. 209, incorporated in Title 15, USCA, Sections 1, 2, and 3.

4. In addition to the violation of the Act in the manner aforesaid, that is, by conspiring with others to restrain the shipment of coal in interstate commerce, it is further plead that the United Mine Workers of America and the Trustees

Answer of Defendants

aforesaid are not exempt from the terms of said antitrust act as provided by Title 15, USCA, Section 16, as they are conducting various businesses for profit and are, therefore, independent of any conspiracy with others, through violence, intimidation, and other coercive methods, of which their dealings with respondents are a part, engaged in the restraining of the mining and shipping of coal in interstate commerce, and that, therefore, the United Mine Workers and its members constitute an illegal combination in restraint of trade under the antitrust laws aforesaid. Accordingly, the contract sued upon is illegal and unenforceable, as it is a part of their scheme to restrain said trade.

5. It is further plead that the conspiracy and agreement entered into between the United Mine Workers of America and large coal operators is in violation of Section 69-112 of the Code of Tennessee, which reads as follows:

"69-112. Conspiracy or agreement to limit the output or to raise the price of coal—Penalty—Any person who, directly or indirectly, enters into a conspiracy or agreement with intent to limit the output of coal in this state, for the purpose of raising the price to the consumer, or to any intermediate dealer, or who enters into any conspiracy or agreement, directly or indirectly, of any nature whatsoever to so raise the price of coal to the consumer or to any intermediate dealer, shall be guilty of a misdemeanor, and fined not less than one thousand dollars (\$1,000)."

6. It was a part of the agreements alleged in the Complaint that the respondents would employ only persons who were members of the United Mine Workers of America, which was an unlawful contract entered into in violation of Sections 50-209 and 50-210 of the Tennessee Code Annotated, which sections read as follows:

"50-209. Contracting for exclusion from employment because of affiliation or nonaffiliation with labor union

unlawful.—It shall be unlawful for any person, firm, corporation or association of any kind to enter into any contract, combination or agreement, written or oral, providing for exclusion from employment of any person because of membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor union or employee organization of any kind.”

“50-210. Exclusion from employment for payment of or failure to pay union dues unlawful.—It shall be unlawful for any person, firm, corporation or association of any kind to exclude from employment any person by reason of such person’s payment of or failure to pay dues, fees, assessments, or other charges to any labor union or employee organization of any kind.”

In this connection defendants plead Section 164(b), Title 29, USCA, which reads as follows:

“(b) Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.”

Therefore, said alleged contract is illegal and unenforceable—it having been entered into with reference to the law of Tennessee.

It is plead that the United Mine Workers of America not having complied with the National Labor Relations Act with respect to the matter of filing certain reports, etc., as required by Title 29, USCA, Section 159 (f), (g), and (h), the execution of said contract was in violation of Title 29, USCA, Section 158, particularly subsection (3) thereof, and is therefore illegal.

7. For further defense to this action, these respondents plead that the United Mine Workers of America breached

the contracts sued upon in that its members, acting with due authority, did, by threats and intimidation, force the respondents to close their mine and to cease operations over a period of time and that the United Mine Workers and its members have for years inaugurated and maintained a reign of fear and dread in the minds of the defendants and their employees, which also is inconsistent with and violative of the aim and purpose of said agreement as expressed therein that "the rules and practices of the industry pertaining to management" would not be changed and that "the mine workers intend no intrusion upon the rights of management as heretofore practiced and understood." The agreement sued upon by plaintiffs is a part of the agreements alleged in the Complaint which provides that it "is an integrated instrument and its respective provisions are interdependent."

8. Respondents further plead that at the time the alleged contract was entered into, the employees of the respondent partnership were not members of the United Mine Workers of America but that some time thereafter said employees, through coercion, intimidation and fear, were persuaded to become members of said Union and that the acts and conduct of the United Mine Workers of America in thus attaining the result of said employees becoming members of said Union violated Title 29, USCA, Section 158(b).

9. These respondents plead the damages occasioned to them by reason of the acts and conduct of the United Mine Workers of America as herein alleged as a setoff against all demands made against them in the Complaint herein filed.

Counterclaim

It is further plead that if said contract was legal, the plaintiff trustees have not fulfilled their obligations to the employees of the respondent partnership in the manner and to the extent as said Trust Agreement provided and

Cross Claim

that, accordingly, the said Trustees and the United Mine Workers of America have in this way breached their alleged contract with the respondent partnership. Plaintiff Trustees and the United Mine Workers of America not having fulfilled their obligations as in said contract provided, the respondents are entitled to recover the full amount paid into said Welfare Fund, as would be true, also, if said contract was void from the beginning.

Filed February 14, 1958

**Cross-Claim Against Plaintiffs and
United Mine Workers of America**

I.

The amount in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000).

II.

The jurisdiction of this Court is invoked under Title 15, USCA, Sections 1, 2 and 3, and if the validity of the contract mentioned in the foregoing answer is sustained, then in that event, the jurisdiction of the Court is invoked also under Title 29, USCA, Section 185. Jurisdiction is further invoked under Title 29, USCA, Section 158(b).

III.

Cross-plaintiffs here show that after entering into the contracts alleged in the Complaint and during the time that said contracts were in full force and effect, the United Mine Workers of America forcibly closed down the cross-plaintiffs' mining operation and forcibly kept said mine closed over a period of time, which was accomplished by the presence of a mob comprised of the members and/or agents of the United Mine Workers of America and was done for the purpose of fulfilling the conspiracy in which the United Mine Workers of America was engaged of re-

Cross Claim

straining the shipment of cross-plaintiffs' coal in interstate commerce.

It is further shown that throughout practically the entire time that the alleged contracts were alleged to be in force, the United Mine Workers of America conducted what amounted to a reign of terror which rendered cross-plaintiffs and their employees in a constant state of fear of bodily harm, as armed mobs composed of the members of the United Mine Workers of America intermittently marched through the countryside, closing numerous mines on their forays.

All of the above was to cross-plaintiffs' damage in the amount of One Hundred Thousand Dollars (\$100,000), which amount cross-plaintiffs say should be trebled under the provisions of the Sherman Antitrust Act hereinbefore referred to, being Title 15, USCA, Section 15.

And the cross-plaintiffs say that the acts and deeds aforesaid of the United Mine Workers of America constitute a just claim at common law against said United Mine Workers of America in the amount of One Hundred Thousand Dollars (\$100,000), together with punitive damages in the amount of Two Hundred Thousand Dollars (\$200,000).

WHEREFORE, in accordance with Rule 13(h), cross-plaintiffs pray for an order requiring that the United Mine Workers of America be brought in as cross-defendants hereto and that judgment be entered against the cross-defendants dismissing their complaint herein and that cross-plaintiffs have judgment against the United Mine Workers of America adjudging said agreements ineffective and awarding judgment against the United Mine Workers of America and in favor of cross-plaintiffs in the amount of Three Hundred Thousand Dollars (\$300,000), together with cost of suit, including a reasonable attorneys' fee; and pray for service of process upon Ed Daniels, James Goddard, and Tom Taylor, residents of Campbell County,

Order, February 19, 1958; Amendment to Answer

Tennessee, as members of the United Mine Workers of America, as a class representing said United Mine Workers of America and all members thereof.

Filed February 19, 1958

Order

The defendants having filed their answer and having plead in cross-claim against the United Mine Workers of America, an unincorporated association, and having applied to the Court under Rule 13(h) for an order to bring such organization before the Court and representing to the Court that jurisdiction can be obtained by service upon members of such organization as a class and also through service upon the organization through the Secretary of State of the State of Tennessee under the provisions of Section 20-223, Tennessee Code Annotated, it is ordered that summons be issued for service upon the United Mine Workers of America in such particulars and as plead by the cross-claim. The summons will bear the address of the cross-defendant, United Mine Workers of America, which, as furnished by the cross-plaintiffs, is 900 Fifteenth Street N. W., Washington, D. C., and the summons will direct the Secretary of State to forward the summons and the cross-complaint to said cross-defendant by registered mail with return receipt requested, and the summons should direct that the return should be made by the Secretary of State after receipt of the return receipt by him, all in accordance with the provisions and intent of the Tennessee Code.

Filed March 5, 1958

Amendment to Answer.

Pursuant to Rule 15(a) of the Rules of Civil Procedure, the defendants hereby amend the answer and counterclaim

Amendment to Answer

heretofore filed by them on the 14th day of February, 1958, as follows:

There is added to the answer Paragraph 10, which reads as follows:

"10. It is further plead that the portion of the agreement which embraced provisions relative to the Welfare Fund, both in its terms and in the manner in which it was interpreted and administered by the parties, is violative of the following sections of the Taft-Hartley Act: 29 U.S.C.A., Section 158(a)(3); 29 U.S.C.A., Section 158(b)(1), (2) and (3); and 29 U.S.C.A., Section 186(a) and (b) as limited by Section 186(c)(5), in that only members of the United Mine Workers of America are entitled to receive benefits from the said fund. It is particularly true that the language of the Welfare Fund provisions of the contract and the manner in which it has been interpreted and administered insofar as it encourages union membership must be taken into consideration with the language of the contract which provides that the employer will require that employees become members of the United Mine Workers of America, and that both of these two parts of the contract must be construed together and cannot be segregated in determining whether or not the contract is violative of 29 U.S.C.A., Section 158(a)(3) and Tennessee Code Annotated, Sections 50-209 and 50-210. The trust fund referred to in the contract sued upon was further invalid because the said fund was used to benefit and further the purposes of the United Mine Workers of America and not used exclusively for the benefit of the employees, because the persons receiving pensions from said trust fund were required or requested by the Union or Union representatives from time to time to do picket line duty and perform other services for the Union in return for the receipt of said pensions."

Motion of the Cross-Defendant

A new paragraph of the counterclaim is inserted, which shall be the first paragraph therein and which reads as follows:

"By reason of the illegality of the trust agreement sued upon, all sums of money paid thereunder by defendants to the plaintiffs were improper and were made without consideration, and, accordingly, defendants aver that they have a right to recover of the plaintiffs the full amount thereof and so pray."

Filed March 14, 1958

**Motion of the Cross-defendant,
United Mine Workers of America**

Comes the cross-defendant, United Mine Workers of America, appearing specially for the purpose of filing this motion to dismiss the cross-claim filed herein, and moves the Court as follows:

• • • • •

III.

To dismiss this action because this cross-defendant is not a necessary or proper party to the original complaint filed herein and because neither Rule 13 nor any of the other Federal Rules of Civil Procedure authorizes the issuance of an order bringing in an additional party as the cross-plaintiffs have attempted to do with respect to this cross-defendant in this action.

IV.

To dismiss this action because this Court is without jurisdiction of the action in that no substantial or colorable cause of action is stated under the Constitution, laws or treaties of the United States.

Motion of the Cross-Defendant

V.

To dismiss this action insofar as it is based upon and jurisdiction is invoked under Title 29, U.S.C., Section 158(b). This section of the United States Code defines unfair labor practices and companion sections of the same statute vest exclusive jurisdiction of hearings for causes arising thereunder in the National Labor Relations Board. Neither Title 29, U.S.C., Section 158(b) nor any provision of the United States Code related thereto vests jurisdiction of such purported causes of action in the United States District Courts.

VI.

To dismiss this action insofar as it is based upon an alleged violation of the Sherman Act, Title 15, U.S.C., Sections 1, 2, 3, and 15 because no colorable cause of action is alleged thereunder.

VII.

To dismiss this action insofar as it is based upon an alleged violation of Title 29, U.S.C., Section 185, because no colorable cause of action is alleged thereunder.

VIII.

To dismiss this action insofar as it is based upon the common law of the State of Tennessee because this Court is without jurisdictional basis for the determination of any common law rights or cause of action averred to exist in the cross-plaintiffs as against this cross-defendant.

IX.

To dismiss this action insofar as it is based upon alleged violations of the common law of the State of Tennessee because no cause of action is alleged thereunder.

• • • • •

Motion to Vacate Order; Answer to Counter-Claim

Filed March 17, 1958

**Motion to Vacate Order Granted Under Rule 13(h) and to
Dismiss the Cross-Claim as to the Plaintiff Trustees**

Come the plaintiffs and move the Court to vacate the order under Rule 13(h), whereunder process was issued bringing the United Mine Workers of America before the Court as a cross-defendant to a cross-claim filed herein because neither Rule 13 nor any other Federal Rule of Civil Procedure authorizes the issuance of an order bringing in an additional party as a cross-defendant as the original defendants have attempted to do with respect to the United Mine Workers of America in this action:

The plaintiffs further move the Court to dismiss the cross-claim as to the plaintiffs on the following grounds:

- (1) Such a cross-claim is not contemplated under the Federal Rules of Civil Procedure; and
- (2) The cross-claim fails to state a claim against the plaintiffs on which relief may be granted.

Filed March 17, 1958

Answer to Counter-Claim

Come the plaintiffs, and for answer to the counter-claim, as amended, filed against them in this cause say:

1. They deny that they have in any way whatsoever failed to fulfill their obligations as Trustees of the United Mine Workers of America Welfare and Retirement Fund.
2. They deny that there is any legal or factual basis, alleged or referred to in the counter-claim, as amended, which would afford a basis for the defendants to recover monies heretofore paid into said Fund by the defendants.
3. They deny that the trust agreement, either as it is written or administered, is in conflict with applicable statutes; and in this connection specifically deny that the trust

*Motion to Amend the Answer, Counterclaim
and Cross-Claim*

agreement requires or that it is administered so as to require membership in the United Mine Workers of America as a condition precedent to eligibility for benefits paid by the Fund.

4. The Trustees further deny the other allegations of the counter-claim, as amended, not specifically denied hereinabove.

Filed March 24, 1958

**Motion to Amend the Answer, Counterclaim and
Cross-Claim Filed by the Defendants**

Come the defendants and move the Court that they be allowed to amend their answer, counterclaim and cross-claim in the respects mentioned hereafter and for grounds for said motion defendants show to the Court that the amendments involve subject matter covering a period of several years, facts that are unknown to the public generally but are known only after a research of the records and history of the United Mine Workers of America and the Welfare Fund represented by the plaintiffs; and it has only been after time-consuming research that the matters allegedly in the proposed amendments have become available to the defendants. The amendments sought are as follows:

That there be added three additional paragraphs to the answer, to be paragraphs 11, 12, and 13 of Section VII of the answer, which paragraphs read as follows:

"11. The Welfare Fund, which is the subject matter of the plaintiffs' action, has heretofore been enjoined in an action of the National Labor Relations Board because of the use of the Fund to benefit members of the United Mine Workers of America exclusively, and there has been no change in the policies, interpretations or administration of the said Fund since said injunction.

*Motion to Amend the Answer, Counterclaim
and Cross-Claim*

"12. The Welfare Fund, which is the subject matter of the plaintiffs' complaint, is entirely dominated by the United Mine Workers of America and is carefully designed to eliminate the possibility of the employers exercising the powers and duties which they are directed to perform under 29 USCA 186(c)(5), and the Fund is in violation of said section and therefore illegal so long as the Fund is a Union-dominated fund.

"13. The Welfare Fund, which is the subject matter of the plaintiffs' complaint, is an instrumentality or tool used by the Union to carry on and participate in the illegal purposes referred to in Section VII, Paragraphs 2, 3, 4, 5, 7, and 8, all of which was accomplished with the full cooperation of the plaintiff Trustees. These things were accomplished by using the Fund to increase the cost of producing coal so as to impose oppressive economic requirements upon employers, forcing small operators out of the business, thus contributing to the conspiratorial arrangement between the International Union and the large coal-producing operators and the monopolistic plan and program of the Union; also, the Fund contributed a large, controlled source of manpower to use on picket line and mob duty to put pressure and force upon employers who would not submit to the Union, such practice being allowed by the Trustees and being reprehensible because it put the recipients of benefits under the Fund to the necessity of participating in these illegal enterprises under threat of losing benefits under the Welfare Fund. This factor has been of material benefit to the Union in monopolizing the labor field in the industry and in carrying on the restraint of trade practices averred in the answer."

There is added to the counterclaim herein filed by the defendants a third paragraph following the paragraph

Motion to Add a Party Plaintiff

added by the amendment dated March 5, 1958, said paragraph reading as follows:

“Defendants make reference to Paragraph 13 of the answer, as amended, hereinabove set forth and adopt the same in this counterclaim. The defendants aver that the plaintiff Trustees have damaged the defendants by participating in the activities and illegal scheme, plan, and program of the Union which has resulted in the closing down of defendants' mines and has caused them to pay funds into the said Welfare Fund under illegal compulsion in the amount of \$100,000.00, and the defendants sue for triple said amount or for \$300,000.00 under the Sherman Antitrust Act, Title 15 USCA Section 15.”

There is added to the cross-claim filed herein a paragraph following the second paragraph of Section III of said cross-claim, said added paragraph reading as follows:

“The defendants and cross-plaintiffs here refer to and adopt in this cross-claim the averments contained in Section VII, Paragraph 13, of the answer herein filed, as amended. Reference is also made to the averments contained in Section VII, Paragraphs 2, 3, 4, 5, 7, and 8, of the answer, and the same are adopted in this cross-claim. The defendants and cross-plaintiffs here aver that this cross-claim is necessary for the granting of complete relief in the determination of the counter-claim herein filed, as amended.”

Filed June 2, 1958

Motion to Add a Party Plaintiff

John L. Lewis and Josephine Roche, Plaintiffs herein, as Trustees of the United Mine Workers of America Welfare and Retirement Fund, join with Henry G. Schmidt, a Trustee of the United Mine Workers of America Welfare and Retirement Fund, in moving this Honorable Court for

Motion to Add a Party Plaintiff; Order, August 11, 1958

an order allowing Plaintiffs and Henry G. Schmidt to amend the Complaint filed in this action, adding Henry G. Schmidt as a party Plaintiff, without prejudice to the proceedings already had in this action, on the grounds that:

1. Charles A. Owen, operator-Trustee of the United Mine Workers of America Welfare and Retirement Fund, died on July 20, 1957.
2. Pursuant to the terms of the trust instrument contained in the National Bituminous Coal Wage Agreement of 1950, and the amendments thereto, Henry G. Schmidt was nominated to succeed the deceased Charles A. Owen, and was duly qualified on April 28, 1958.
3. Henry G. Schmidt is a citizen of the State of Ohio.
4. This is an action to recover trust property of the United Mine Workers of America Welfare and Retirement Fund and as Trustee, succeeding Charles A. Owen. Henry G. Schmidt is charged with the fiduciary duty, along with the remaining Plaintiffs, John L. Lewis and Josephine Roche, of reducing trust property to possession.

WHEREFORE, Plaintiffs John L. Lewis and Josephine Roche, join with Henry G. Schmidt in praying for an order of this Honorable Court adding Henry G. Schmidt as Trustee of the United Mine Workers of America Welfare and Retirement Fund to this action as a party Plaintiff.

Entered August 11, 1958

Order

In this cause on motion of the plaintiffs, John L. Lewis and Josephine Roche, as Trustees of the United Mine Workers of America Welfare and Retirement Fund, and Henry G. Schmidt, recently appointed additional Trustee of said Fund, it is ordered by the Court that said Henry G. Schmidt,

*Additional Motion to Amend the Answer,
Counterclaim and Cross-Claim*

a resident of the State of Ohio, be named as an additional party plaintiff to the action, the adding of such additional party plaintiff being made without prejudice to any and all proceedings heretofore had in this action, the proceeding standing in the same plight and condition as heretofore, the said Henry G. Schmidt being bound by all action heretofore taken herein.

This order is entered without prejudice to the right of defendants to deny by answer or other appropriate procedure that the said Henry G. Schmidt, Trustee, was properly appointed an additional Trustee of said Fund or that he is empowered with the authority of an additional Trustee or to deny the right of the defendants to present other defenses available to them by reason of the said Henry G. Schmidt's having been made a party plaintiff.

Filed June 26, 1959

**Additional Motion to Amend the Answer, Counterclaim and
Cross-Claim Filed by the Defendants**

Come the defendants and move the Court that they be allowed to amend their answer, counterclaim and cross-claim so as to state more specifically and in more detail the nature of the conspiracy and restraint of trade alleged to have been engaged in by the plaintiffs and the cross-defendant, United Mine Workers of America. As grounds for this motion, defendants assert that the allowance of the motion will facilitate the trial of the case by more specifically designating the issues involved under the present allegations concerning the conspiracy and restraint of trade. The amendments sought are as follows:

That there be added at the end of Section VII, paragraph 3, the following:

"In contrast to the disputes which existed between the large coal-producing companies of the country and

*Additional Motion to Amend the Answer,
Counterclaim and Cross-Claim*

the cross-defendant United Mine Workers of America during the period of World War II and the postwar period, there has been no dispute of any consequence between these parties since 1950. The conspiracy herein alleged commenced in 1950 and has been in effect since that time and has been implemented by additional understanding between the parties to make more effective the activities in restraint of trade. The cross-defendant Union agreed that it would not protest the closing down of mines of the large companies which could not be mechanized and would be willing to submit to the termination of employment for thousands of its members because of the mechanization of mines, and the cross-defendant agreed to go along with the understanding that the coal industry would be confined to a comparatively few companies and the miners employed would be reduced drastically. As a consequence of this phase of the understanding, membership of the United Mine Workers has decreased from 500,000 to 150,000. The United Mine Workers further agreed that it would not make special agreements with operators, such as the small operators in the Kentucky and Tennessee region, which would give consideration to local conditions and the particular coal seams mined by the operators, but it was agreed that the Union would have a standard agreement for all operators. This phase of the understanding existed before 1958 but it was formally inserted in the National Bituminous Wage Agreement in that year. The Union further agreed that it would do all things within its power to keep the non-union coal from being mined and marketed and would restrain the trade of the non-union operators and those operators who did not abide by the terms of the National Bituminous Coal Wage Agreement in order that the large Union operators would have the business which the smaller non-union oper-

*Additional Motion to Amend the Answer,
Counterclaim and Cross-Claim*

ators were then enjoying or might enjoy in the future. The Union further agreed that in the planned mechanization program, the Union would aid in the financing which would become necessary to attain the mechanization of the mines of the large companies. On the other hand, the large coal-producing companies agreed with the Union that they would not protest the demands of the Union with respect to wage increases so long as the companies were able to match those increases by increased productivity through mechanization. These companies further agreed that there would be no protests from them over the Union's use of the Welfare Fund for its own purposes and in furtherance of the Union's organizing efforts, and these operators, having virtual control with the Union over the terms inserted in the National Bituminous Coal Wage Agreement, agreed that the employer representative on the Trustees of that Fund would be amenable to the demands of the Union representative on the Board of Trustees of the Fund. Furthermore, these large coal companies agreed that there would be no retaliation for the use of the employees in the mines of those large companies by the Union to supplement the mobs and caravans which the Union used in its organizing efforts, even though it meant that the mines would be closed down from time to time as these Union employees went out on their forays. These large companies agreed that they, too, would do all things possible to restrain the production, marketing, and sale of non-union coal. To this end marketing facilities, including large brokerage firms, and coal transportation facilities, particularly on the waterways of the country, fell into the hands of the owners of the large coal companies, and the non-union coal has been effectively blocked from entering the great markets of coal except for sales to government agencies and to some

*Additional Motion to Amend the Answer,
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of the larger consumers in the South. This phase of the understanding required implementation in 1958, and in the 1958 Wage Agreement it was required that all signatory operators refrain from buying or marketing non-union coal, and a system of enforcement with respect to this provision was inserted into the agreement with a view to ending any business dealing at all between the signatory operators and their affiliated interests with the non-union operators of the country. The companies and the Union agreed to do all things possible to bar the non-union coal from the market afforded by the coal-consuming government agencies, particularly the TVA, and the subsequent effort to impose a Walsh-Healey wage rate in the coal industry and thereafter to raise that rate was a part of the agreement for the purpose of shifting the trade from non-union operators to the large coal producers of the country. The TVA market has largely been taken from the defendants and cross-plaintiffs and other small operations in the East Tennessee and East Kentucky area by the large coal producers by reason of the combination of the Walsh-Healey wage rates and the crippling of production and efficiency of these operators by the forays of the Union mobs and caravans in these coal fields. The large Southern coal consumers, principally public power companies, remain as a market for some of the coal produced by the small Southern operators, but the large coal companies, with the assistance of the defendant Union, are now trying to take these markets over by practices which violate the Clayton Act, 15 USCA, Section 13a. Pursuant to the foregoing understanding and conspiracy the Union, pursuing its effort to drive out of the industry non-union producers, has purchased mines previously non-union and has converted them into Union operations which are taking over the business previously done by the small South-

Memorandum

ern operators. Likewise, the Union has invested many millions of dollars in aiding the large coal operators to mechanize their mines pursuant to the foregoing understanding. These companies have tripled or quadrupled their investment in plant, machinery, equipment, etc., during the past five or six years and have depended upon the financial aid of the Union. The Union has made itself a business interest identifiable with the large coal producers and it has a direct financial interest in the shifting of trade from the small Southern operators to the large coal producers. The use of mobs and caravans, including large numbers of organized pensioners and those holding hospital and medical benefit cards of the United Mine Workers of America Welfare and Retirement Fund has been an important factor in the carrying out of the program of suppressing the competition of the small Southern operators. This has been possible only because of the cooperation and participation of the Trustees of the Welfare Fund."

The counterclaim against plaintiff Trustees and the cross-claim against the defendant Union are amended by incorporating by reference the allegations contained in the foregoing amendment to the answer.

Filed July 1, 1959

Memorandum

(Delivered from the bench)

This case is before the Court on various motions of cross-defendant, United Mine Workers of America; which, for convenience, will be referred to as UMW, and motion to amend the answer, counter-claim and cross-claim by James M. Pennington, Ralph E. Phillips and Bruce Phillips, individually, and as Phillips Brothers Coal Company, a partnership, the original defendants. Reference will be made

Memorandum

first to the motion of cross-defendant, UMW, found on page 41 of the record.

.

It is further urged in this motion that Rule 13 is insufficient to bring the UMW before the Court by cross action. The cross complaint avers, among other things, that the UMW and the Trustees of the Union fund conspired to raise wages to such an extent that the defendants and cross-plaintiff could not pay such wages and that the alleged conspirators committed one or more overt acts towards that end; that UMW conspired with one or more businesses to raise the wages of employees to a point that cross-plaintiff could not pay and that these conspiracies were in violation of the Sherman Anti-Trust laws.

It is the theory of cross-plaintiff that UMW should be brought in the suit in order for all questions to be decided in one suit.

The Court overrules the motion to dismiss the cross action as being improperly brought under Rule 13(h), without prejudice to the cross-defendants to renew the motion at the pre-trial.

Ground No. 4 of the motion asserts that the Court is without jurisdiction in that no substantial or colorable cause of action is stated under the Constitution, laws or treaties of the United States. The Court likewise overrules this ground with the right of cross-defendants to renew at the pre-trial hearing.

Ground No. 5 is sustained as cross-plaintiff concedes that this ground is well taken.

Ground No. 6 states that no colorable action is stated under Title 15, U.S.C., Sections 1, 2, 3 and 15 of the Sherman Act. The Court at this time is of the opinion that the charges that the Union conspired with one or more employers to violate the anti-trust laws, particularly, Title

Order, July 2, 1959

15, U.S.C., Sections 1, 2, 3 and 15 of the Sherman Act, states a prima facie cause of action, and for that reason cross-defendants' motion is overruled without prejudice to its right to renew at the time of the pre-trial.

Ground No. 7 asserts that a cause of action is not stated under Title 29, U.S.C., Section 185, which is the breach of contract section. This motion is likewise overruled with the right of the cross-defendants to renew it at the pre-trial.

Ground No. 8 relates to the common law action. The Court is of the opinion that this ground must be overruled under the authority of *United Mine Workers of America vs. Meadow Creek Coal Co., Inc.*, 263 F.2d 52, USCA 6 Cir., January 21, 1959.

Ground No. 9 must be overruled for the same reasons.

We direct our attention at this time to the motion to vacate the order issued under Rule 13(h) and to dismiss the cross-claim as to cross-defendants' Trustees. This motion is to be found on pages 42 and 43 of the record. For the reasons heretofore indicated above, this motion is denied at the present time with the right to movants to renew at the pre-trial hearing.

Let an order be presented in conformity with the above views.

Entered July 2, 1959

Order

This cause came on to be heard on June 30, 1959, on the Motion to Dismiss filed by the cross-defendant, United Mine Workers of America, on March 13, 1958, Motion of the plaintiffs filed March 17, 1958, to vacate the order

Order, July 2, 1959

granted under Rule 13(h) and to dismiss the cross-claim as to the plaintiffs, Motion of the defendants and cross-plaintiffs filed March 24, 1958, to amend the answer, counterclaim and cross-claim, additional motion of the defendants and cross-plaintiffs filed June 26, 1959, to amend the answer, counterclaim and cross-claim and Motion of the defendants and cross-plaintiffs filed June 19, 1959, for production of documents for inspection, copying and photographing, all of which matters were considered by the Court on briefs and oral argument by Counsel for all parties.

For the reasons specified in the Opinion of the Court delivered from the bench at the conclusion of the hearing, memorandum of which Opinion has been filed in this cause—reference to such memorandum being here made,—the Court does hereby order as follows:

That the Motion to Dismiss filed by the cross-defendant, United Mine Workers of America, is overruled except with respect to grounds Numbers V and XI, which are sustained.

The cross-defendant, United Mine Workers of America, is given leave to renew at the pre-trial conference, without prejudice, the grounds in said Motion to Dismiss numbered III, IV, VI and VII.

The motion of the plaintiffs filed March 17, 1958, to vacate the order granted under Rule 13(h) and to dismiss the cross-claim as to the plaintiff Trustees, is denied but the right is reserved to plaintiffs to renew such motion at the time of the pre-trial conference.

The motions of the defendants and cross-plaintiffs to amend the answer, counterclaim and cross-claim, filed on March 24, 1958, and June 26, 1959, are allowed and the amendments proposed in said motions shall be considered as having been added to and made a part of the pleadings referred to in said motions.

The cross-defendant, United Mine Workers of America,

Answer of U. M. W. to Amended Cross-Claim

is allowed fifteen (15) days from June 30, 1959, to attempt to work out a stipulation with respect to the motions of defendants and cross-plaintiffs for the production of documents for inspection, copying or photographing, or to file objections to said motion but the cross-defendant, United Mine Workers of America is urged to comply with this portion of the order within ten (10) days if reasonably possible.

Filed August 15, 1959

Answer of the United Mine Workers of America to the Amended Cross-Claim Filed Against It and Others

Comes the defendant, United Mine Workers of America, hereinafter referred to as "UMWA", by its attorneys and for answer to that portion of the amended cross-complaint to which it has not directed a motion to strike, and without waiving its said motion and without waiving the right heretofore granted to it to rely upon earlier motions made by it, says:

I

It admits that the amount in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars (\$3,000.00) as averred in Section I of the cross-complaint.

II

It admits that cross-plaintiffs seek to invoke jurisdictions of this Court herein on the basis of the statutory provisions referred to therein, but it denies that said statutory provisions are applicable to an action based upon the facts here alleged and the situations here involved.

III

It admits that the cross-plaintiffs entered into the contracts referred to in Section III of the cross-complaint but

Answer of U. M. W. to Amended Cross-Claim

denies each and every other allegation and averment contained therein.

IV

To the portion of the cross-complaint that was inserted therein under the motion filed on March 24, 1958 for amendment to the cross-claim, which amendment was allowed on July 1, 1959, this defendant has heretofore filed a motion to strike a portion thereof and it relies upon said motion. It denies each and every allegation added to the cross-complaint by said amendment to which its motion to strike is not applicable.

V

To the portion of the cross-complaint that was inserted therein under the motion filed June 26, 1959 for amendment to the cross-claim, which amendment was allowed on July 1, 1959, this defendant has heretofore filed a motion to strike a portion thereof and it relies upon said motion. It denies each and every allegation added to the cross-complaint by said amendment to which its motion to strike is not applicable.

VI

As affirmative defenses to the claims set forth in the cross-claim, as amended, this defendant says:

1. This Court lacks personal jurisdiction over UMWA.
2. The amended cross-claim purports to charge in indefinite and uncertain terms violations of certain sections of the Sherman Antitrust Act, and under the averments as therein set forth no relief can be granted.
3. This Court lacks jurisdiction to grant the relief sought in the cross-claim against this defendant in that UMWA and any acts on behalf of or by UMWA which are referred to in the cross-claim, and which on the trial may be shown to have occurred, are exempt from the provisions of the sections of the Sherman Act referred to in the complaint, by virtue of the provisions of Title 15 U.S.C.A., Section 17.

*Motion of the Cross-Plaintiff to Amend
Cross-Claim or Counter-Claim*

4. Any acts on behalf of or by UMWA referred to in the cross-claim, and which on the trial may be shown to have occurred and to involve or affect interstate commerce of the United States, are, to the extent that there are any effects whatsoever therefrom on the interstate commerce of the United States, merely incidental, indirect or remote to such commerce.

5. This Court lacks jurisdiction to grant the relief sought in the cross-claim against this defendant in that any acts on behalf of or by UMWA referred to in the cross-claim, and which on the trial may be shown to have occurred, relate to matters within the primary jurisdiction of the National Labor Relations Board.

6. This Court lacks jurisdiction to grant the relief sought in the cross-claim against this defendant in that any acts on behalf of or by UMWA referred to in the cross-claim, and which on the trial may be shown to have occurred, were acts taken or performed pursuant to the public policy of the United States and in the public interest.

7. The cross-claim purports to state an unidentified and unspecified common law cause of action seeking claimed actual and punitive damages. Said alleged common law cause of action fails to present any substantial fundamental question upon which jurisdiction can be predicated. Hence this Court lacks jurisdiction to grant the relief sought in the cross-claim on the alleged common law cause of action.

Filed September 13, 1960

**Motion of the Cross-Plaintiffs, James M. Pennington, et al., to
Amend the Cross-Claim or Counter-Claim in this Case to
Specify the Period of Time Encompassed by the
Cross-Claim or Counterclaim.**

Come the cross-plaintiffs, James M. Pennington, et al.,
and move the Court that the pleadings with respect to the

Order of Substitution of Parties

cross-claim or counterclaim against the cross-defendants, United Mine Workers of America and John L. Lewis, Josephine Roche and Henry G. Schmidt, Trustees of the United Mine Workers of America Welfare and Retirement Fund, be amended in the following respects:

1. The cross-plaintiffs, James M. Pennington, et al., claim damages for the period commencing four (4) years prior to the filing of the original cross-claim which was filed on February 14, 1958, the period of damage to end December 31, 1958, at which time the cross-plaintiffs ceased to do business.

* * * * * * * *

2. In proving the existence of the conspiracy charged in the cross-claim, cross-plaintiffs rely upon evidence of factual matters and transactions which took place up to the time of the filing of this motion, which factual matters and transactions have probative value with respect to the question of the existence of, the nature of, and the extent of the conspiracy which existed during the damage period in the case.

Entered September 30, 1960

Order of Substitution of Parties.

It being shown that the defendant and cross-plaintiff, Burse Phillips, died in July, 1960, and that his widow, Lillian Goad Phillips, has duly qualified as Administratrix of his estate in the County Court of Scott County, Tennessee, it is hereby ordered that Lillian Goad Phillips, as Administratrix of the estate of Burse Phillips, deceased, be substituted as defendant and cross-plaintiff, in the place and stead of Burse Phillips.

*Order, November 25, 1960; Amended Answer to
Counter-Claim*

Filed November 25, 1960

Order

Upon application of the plaintiffs, leave is hereby granted to plaintiffs to file an answer to the counterclaim as amended, such answer to stand in lieu of said answer as heretofore filed.

Filed November 25, 1960

Amended Answer to Counterclaim

Come the plaintiffs, by leave of Court previously granted, and for answer to the counterclaim as amended and in lieu of the answer to said counterclaim previously filed, say:

1. They deny that they have in any way whatsoever failed to fulfill their obligations as Trustees of the United Mine Workers of America Welfare and Retirement Fund.
2. They deny that there is any legal or factual basis, alleged or referred to in the counterclaim, as amended, which would afford a basis for the defendants to recover monies heretofore paid into said Fund by the defendants.
3. They deny that the trust agreement, either as it is written, interpreted or administered, is in conflict with applicable statutes. They further deny that the collective bargaining agreement is violative of 29 USCA, Section 158(a)(3) and/or Sections 50-209 and 50-210 of Tennessee Code Annotated. Furthermore they specifically deny that the trust agreement requires or that it is interpreted or administered so as to require membership in or activities on behalf of the United Mine Workers as a condition precedent to eligibility for benefits paid by the Fund.
4. They deny that they have been a party to any conspiracy to create a monopoly or to restrain trade in the coal industry with any person, corporation or unincorporated association. The Trustees are without knowledge of

Amended Answer to Counter-Claim

any alleged conspiracy to which the United Mine Workers of America and others are charged as being parties and if any such alleged conspiracy becomes material to the rights of plaintiffs herein, they demand full proof with reference thereto.

5. They deny that they have violated or attempted to violate any provision of the Sherman Anti-Trust Act as alleged by the counterclaim.

6. They deny that the assets of the United Mine Workers of America Welfare and Retirement Fund have been used for any purpose other than that provided by the trust instrument and for the administration of the Fund.

7. Further answering, the Trustees specifically deny that they have been enjoined in an action of the National Labor Relations Board because of the use of the Fund to benefit members of the United Mine Workers of America exclusively; they deny that the Welfare Fund is dominated by the United Mine Workers of America, that it is carefully designed to eliminate the possibility of employers exercising powers and duties required of them under 29 U.S.C.A. Section 186(c)(5) or that the Fund is in violation of said 29 U.S.C.A. Section 186(c)(5); they deny that the Welfare Fund is an instrumentality or tool used by the United Mine Workers of America and specifically for the illegal purposes referred to in the counterclaim; they deny that the Welfare Fund contributed a source of manpower for union purposes or that any persons were required by them under threat of losing benefits to participate in such activities; they deny that they have participated in any manner whatsoever in any illegal scheme, plan or program to damage the cross-plaintiffs; they deny that any action taken by them has resulted in the closing down of cross-plaintiffs' mine or that they have caused cross-plaintiffs to pay funds in the amount of \$100,000.00 or any other amount into said Fund under illegal compulsion; they are without knowledge of any agreement between large coal producing companies

*Order, January 16, 1961; Motion of Defendants
and Cross-Plaintiffs*

and the United Mine Workers of America which provided that there would be no protest by such companies over the union's use of the Welfare Fund for its own purposes and therefore they deny that such agreement existed; they deny that the union used the Welfare Fund for its own purposes; they deny that the Trustee nominated by Bituminous Coal Operators is now or has been amenable to the demands of the member on the Board of Trustees of the Fund nominated by Union or that any agreement to that effect has been made or exists; and they deny that they have cooperated or participated in any plan with respect to the suppression of competition of southern coal operators or that they have encouraged or required pensioners to participate in such alleged plans or that they have permitted or authorized the use of medical benefit cards in connection with such plans.

8. The Trustees further deny the other allegations of the counterclaim, as amended, not specifically denied hereinabove.

Filed January 16, 1961

Order

It being shown that the defendant and cross plaintiff, Raymond E. Phillips, had been misnamed in the original complaint in that he was erroneously referred to as Ralph E. Phillips, it is hereby ordered that the record show the correct name of the defendant and cross plaintiff to be Raymond E. Phillips.

Filed April 5, 1961

Motion of James M. Pennington, et al., Defendants and Cross-Plaintiffs, for an Order Consolidating the Claim of Plaintiffs Against Defendants and the Claim of Cross-Plaintiffs, James

Motion of Defendants and Cross-Plaintiffs

M. Pennington, et al., Against Cross-Defendant, United Mine Workers of America for Trial and Dismissing the Claim of Cross-Plaintiffs, James M. Pennington, et al., Against the Cross-Defendants, John L. Lewis, et al.

Defendants and cross-plaintiffs, James M. Pennington, et al., show to the Court as follows:

The very recent decision of the United States District Court for the Eastern District of Tennessee, Southern Division, raises complex issues as to whether the counterclaim filed by these parties against the original plaintiff Trustees, John L. Lewis, et al., may be maintained. As a practical matter, it is not necessary for these parties to press the counterclaim against the Trustees, John L. Lewis, et al., in order to obtain relief since the same claim is asserted against the cross-defendant United Mine Workers of America, which is abundantly solvent. To continue to maintain the counterclaim against the Trustees would unduly burden the case with complex issues not necessary for practical relief, and would defeat the purposes of all parties to simplify the issues in this cause.

Accordingly, these parties move the Court for an order: Consolidating the claim of the Trustees in the original complaint against these defendants with the cross-claim of these defendants against the cross-defendant, United Mine Workers of America pursuant to Rules 42(a) and 54(b) of the Federal Rules of Civil Procedure; these respective claims involving a common question of fact, to-wit: the existence of the conspiracy charged by these parties, said conspiracy being the only defense to the claim of the Trustees in the original complaint and being the only basis for the counterclaim against the United Mine Workers of America; and dismissing the counterclaim of these parties against the Trustees, John L. Lewis, et al.

Response of U. W. W. to Motion of Defendants

Filed April 6, 1961

Response of United Mine Workers of America to Motion of Defendants and Cross-Plaintiffs to Dismiss Their Claim Against the Plaintiffs and to Consolidate Plaintiffs' Case with Cross-Plaintiffs' Claim Against United Mine Workers of America and Motion to Dismiss

UMW has no objection to the order dismissing the Phillips' claim against the Trustees.

UMW does object to the consolidation for trial of the Trustees' claim with the claim of Phillips against UMW.

The Court will recall that UMW was made a cross-defendant under the purported authority of Rule 13(h), granted ex parte. In the first responsive pleading filed by UMW to Phillips' cross-claim, which was a motion to vacate the order and dismiss the cross-claim filed on March 13, 1958, UMW moved to vacate and dismiss on the ground that the order and cross-claim were not contemplated or authorized by Rule 13(h) or by any other Federal Rule of Civil Procedure. At that time Phillips was making no claim against the Trustees in any wise related to the claim made against the UMW, and we are confident that had Phillips' claim remained as it was then, the Court would have sustained UMW's motion for the reasons stated in section B(2) (pages 6-7) of UMW's supporting brief filed on September 18, 1958, reference to which is here made.

Phillips, however, undertook to cure the plain defect in its position under Rule 13(h) by asserting against the Trustees a claim similar to that made against the UMW under the Sherman Act, and the Court overruled UMW's motion. Now, on the eve of trial, and in recognition of the fact that it has no valid claim against the Trustees, Phillips seeks leave of the Court to dismiss such claim. In further recognition of its weakness in having UMW's case tried jointly with that of the Trustees, it asks the Court to consolidate the Trustees' case with its case against UMW.

Order, April 10, 1961

47a

In light of UMW's previous objection to Phillips' tactics, and for the reasons stated in our memorandum above referred to, we think that this motion for consolidation is ill made and that the case commenced against UMW by ex parte order under Rule 13(h) should be dismissed.

Filed April 10, 1961

Order

On motion of the defendants and cross-plaintiffs, James M. Pennington, et al, the Court does hereby Order, Adjudge and Decree as follows:

1. The claim of cross-plaintiffs James M. Pennington, et al against the cross-defendants John L. Lewis, et al, Trustees of the United Mine Workers of America Welfare and Retirement Fund, is dismissed.
2. The claims of the plaintiff Trustees John L. Lewis, et al in the original complaint against the defendants James M. Pennington, et al; and of the cross-plaintiffs James M. Pennington, et al against the cross-defendant, United Mine Workers of America, are consolidated for trial, the issues to be decided by the jury.

The motion of the cross-defendant United Mine Workers of America to dismiss this action, such motion having been filed on April 6, 1961, is hereby overruled.

The exception of the plaintiff Trustees to the action of the Court in consolidating the cases as noted in paragraph 2 hereof is hereby noted and reserved.

The exceptions of the cross-defendant United Mine Workers of America to the consolidation of the cases as noted in paragraph 2 hereof and to the action of the Court in overruling its motion to dismiss filed on April 6, 1961, are hereby noted and reserved.

Order Pursuant to Pre-Trial

Filed April 10, 1961

Order Pursuant to Pre-trial

It is agreed by counsel for the parties and ordered by the Court that this statement will be binding at the trial of the cause on its merits:

NATURE OF ACTION

This is a suit brought by John L. Lewis, et al, as Trustees of the United Mine Workers of America Welfare and Retirement Fund against defendants, James M. Pennington, et al, as partners of Phillips Brothers Coal Company for \$55,982.62, alleged to be due pursuant to the terms of a trust provision contained in a collective bargaining agreement which existed between United Mine Workers of America and the defendants, James M. Pennington, et al, and being alleged royalty due from said defendants on coal mined under the said agreement. The only defense raised by the defendants is that the collective bargaining agreement sued upon was an instrument used in a conspiracy which violated the Anti-trust law and the National Labor Relations Act as amended. If there were no such conspiracy, the parties have stipulated that the amount sued for is the correct amount to which the plaintiff Trustees are entitled. The same alleged conspiracy, in violation of the anti-trust law, is the basis of a cross-claim by the cross-plaintiffs, James M. Pennington, et al (the same parties who are defendants in the original complaint) against the cross-defendant, United Mine Workers of America. This cross-claim seeks recovery of single or compensatory damages in the amount of \$100,000.00, to be trebled under the anti-trust law, and for attorneys' fees.

THEORIES UPON WHICH PLAINTIFFS EXPECT TO RECOVER:

This suit was instituted by the three Trustees of the United Mine Workers Welfare and Retirement Fund who are serving as Trustees of that Fund having been chosen in accordance with the provisions of a collective bargaining

Order Pursuant to Pre-Trial

agreement existing between the United Mine Workers and various coal operators, the defendants having joined as a signatory to that agreement, and it was in effect for the period beginning October 1, 1953, through December 31, 1958. The trust agreement contained in the collective bargaining agreement provides that the signatories thereto should pay into the Welfare Fund forty cents per ton on each ton of coal produced by the company for use or sale during the period the contract was in existence.

It is admitted in this record that during this period the defendant company produced for use or sale a total of 145,532.16 tons of coal, this fact being established by stipulation; and it is further stipulated that during this same period the defendant paid into the Welfare Fund five payments at different times in the total amount of \$2,227.70.

The plaintiffs, under the terms of the trust instrument contained in said collective bargaining agreement, say that they are entitled to receive, and have judgment for, the unpaid balance at the rate of forty cents per ton on the 145,532.16 tons which defendants produced during that period. Then, the net amount due under the terms of the agreement is \$55,982.62.

**THEORIES UPON WHICH DEFENDANTS EXPECT TO DEFEAT
RECOVERY AND CROSS-PLAINTIFFS EXPECT TO RECOVER**

Both as a defense to the claim for the Welfare Fund royalties and as a basis for suing the Union the Coal Company (Phillips Brothers Coal Company operated by James M. Pennington, et al.) contends that the United Mine Workers of America engaged in a conspiracy with the Trustees of the Welfare Fund and with the major coal companies of the country, particularly Consolidation Coal Company, Peabody Coal Company, West Kentucky Coal Company, Nashville Coal Company, Island Creek Coal Company, The Pittston Company and Pittsburgh-Midway Coal Company, and

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others, to stabilize the prices of coal, to restrain the trade of small coal producers and to monopolize the bituminous coal industry for the major coal producers. These parties contend that the nature of the conspiracy was as follows:

BACKGROUND OF THE CONSPIRACY:

That after World War II the economics of the bituminous coal industry became unstable by reason of the fact that there was more coal being produced than the markets required; that before 1950 the major coal producers and the Union were in agreement that the major problem of the industry was over-production and that the growth of small independent and non-union producers was contributing to the problem; that the major companies and the Union disagreed on how the problem should be handled in the period right after World War II; that on its side the Union was contending that the answer was to cut down on the working time of all producers; that the Union urged a three-day work week; that for many months before the 1950 contract was signed the Union took the initiative on this question and directed the working time of the men in the industry, the Union Officials setting, on some weeks, three-day work weeks, and at other times "no day" work weeks; that domination of the men in the industry was an essential part of the Union's effort to dictate the economics of the industry and this domination was interfered with by the passage of the new Taft-Hartley Act; that the Union's efforts to maintain closed shops and maintain a union-controlled Welfare Fund were challenged and in some instances were defeated in the courts by the major coal companies; that the major coal companies were opposed to the Union's dictating the working time of the men in the industry but because it cut into their profits.

FORMATION OF THE CONSPIRACY:

* That a marked change occurred in the relations between the Union and the major coal companies in 1950, as dis-

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closed in their bargaining relations before and after that year; that the express understanding at the time of the signing of the 1950 bituminous coal wage agreement was that the major coal companies, themselves, were to decide on the working time for their employees; that this was a surrender on the part of the Union of its previous policy of seeking to control the economics of the industry by controlling the working time; that the understanding was that the problem of stabilizing the economics of the industry, the problem recognized by both Union and the major coal companies, was to be taken care of by eliminating the smaller and weaker companies in great numbers, leaving the industry to the major coal companies alone.

USE OF THE NATIONAL BITUMINOUS COAL WAGE AGREEMENT
IN THE CONSPIRACY AND EVASION OF THE TAFT-HARTLEY LAW:

That the conspiracy involved the use of the National Bituminous Coal Wage Agreement and its successive amendments as an instrument in accomplishing the purposes of the conspiracy; that the accomplishment of the purposes of the conspiracy were furthered by the domination of the Union over the men in the industry and that in 1950, by the express statement of the representatives of the major coal companies, the Welfare Fund was turned over to the Union's control, and that rather than opposing the Union's efforts to evade the Taft-Hartley Act as they had before, the major coal companies have fostered the Union's domination of the men of the industry so that the terms of the National Coal Wage Agreement could be imposed upon the small mines; that by successive amendments to the Uniform National Bituminous Coal Wage Agreement's terms the wage scale and the Welfare Fund payments per ton were raised to exceedingly high levels; that the mechanization program of the major coal companies was to go ahead rapidly and that the successive increases in wage scale and Welfare Fund payments were designed and tailored to meet

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the abilities of the major coal companies to mechanize and not have their profits affected by the increasing labor costs in the successive amendment; that the successive amendments to the labor contract were made after careful consideration of the abilities of the major coal companies to make the increases without affecting their profits; that the Union had no concern as to whether the weaker companies could pay; that the Union displayed its knowledge that the weaker companies could not pay and that they would fall by the wayside by reason of the increased terms; that the Union favored the taking over of the industry by the large combines of coal producers and that the Union worked toward this end; that the campaign to impose the wage contracts upon the smaller, independent and non-union mines was intense after 1950; that in areas of strong resistance mobs and terrorism were used; that the Trustees of the Welfare Fund stood by as pensioners under the Welfare Fund were organized into bands which had as their purpose the imposition of the uniform contract upon the smaller and non-union companies; that the paying of Welfare Fund benefits to men in the industry depended upon the retention of membership in good standing in the Union, certified to by Local, District and International Union Officials; that the enticement of benefits under this Fund was held out to the men in the industry as being under Union control; that the finances of the Union and the finances of the major coal companies have been used to further the drive to bring all production under the contract; that one or more major coal companies have assisted in crushing the opposition of the principal Union competitor of United Mine Workers of America in the bituminous coal labor fields; that the result of this conspiracy and these activities has been that large numbers of small companies have been driven out of the industry and that thousands of men in the industry have been driven into unemployment; that when these men are put out of the industry they cease to participate in Welfare Fund benefits and the Fund remains

as a source of benefit for the employees only of those companies that survive.

USE OF BOYCOTTS:

That to accelerate the demise of the smaller companies devices were inserted into later amendments of the National Bituminous Coal Wage Agreement to further restrain their trade; that companies which could not afford to pay the wage scale in terms of the contract were barred from operating on the lands of signatories to the contract; that the major companies have acquired great tracts of the coal lands of the country and there is little good coal land left for the small companies to operate upon; that the small companies were prohibited from selling coal to the signatories to the contract, including the major companies which supplied coal to the large market under large contracts.

THE TVA MARKET:

That the development of the Tennessee Valley Authority as the principal coal purchaser of the entire country called the attention of the conspirators to the Southern Appalachian region when TVA opened up many of its coal-using generating units in 1954, 1955 and 1956; that in 1955 the conspirators manifested their intent and purpose to take over the TVA market by working together with the Secretary of Labor to obtain a determination of a minimum wage in the bituminous coal industry under the Walsh-Healey Act; that the purpose was to drive out of the Government market, particularly the TVA market, the small coal producers; that this determination imposed a wage rate upon a producer of coal supplying coal to a Government market twice as high as the wage rate determined by the Secretary of Labor in any other industry; that, in accordance with this design, this determination of a minimum wage effectively barred the defendants and cross-plaintiffs from participating in the term market of the TVA because they could

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not pay the kind of wages set forth in that determination; that because contracts for less than \$10,000.00 were exempted from the minimum wage determination, the defendants and cross-plaintiffs were able to ship coal on TVA spot orders; that the conspirators set about to eliminate or drastically reduce the spot market of TVA; that when this effort failed to bring results the conspirators adopted the practice of predatory pricing to drive the spot coal market price down to a price which a small producer could not meet at a profit; that in this phase of the campaign the West Kentucky Coal Company and its subsidiary, Nashville Coal Company, took the most prominent part; that the Union had over \$25,000,000.00 of risk capital invested in these companies; that large amounts of tonnage were dumped upon the spot coal market of TVA at constantly reduced prices; that the spot coal price was beaten down to such an extent that defendants and cross-plaintiffs suffered large losses in trying to retain their position in that market and finally had to abandon their sale of coal to that market and it became necessary for them to abandon the partnership business.

**ENFORCEMENT OF NATIONAL BITUMINOUS COAL
WAGE AGREEMENT:**

That companies which survived the other onslaughts of the conspiracy have been killed off by such lawsuits as this, brought by the Trustees of the Welfare Fund; that prior to 1958 some three or four cases were brought by the Trustee against some of the larger producers in the area; that cases against the smaller producers were commenced in 1958 and the following period; that some forty-one of these cases have been brought and are presently pending against the small companies of the area in the State of Tennessee, since January 1, 1958; that the amount sued for by the Trustees exceeds the combined profits of the company for its entire life.

That the Union, in carrying on the foregoing activities

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pursuant to its understanding and agreement with the major coal companies, was not acting alone to further its own interests as an organization of wage earners, but was aiding, abetting and cooperating with business men in an effort to restrain trade of small coal companies and to monopolize the industry for the major coal companies; that the conspiracy involved boycotts and a purpose to stabilize the prices of coal in the industry; that the practices used pursuant to the conspiracy, particularly the imposition of the constantly increasing terms of the National Bituminous Coal Wage Agreement upon the small coal companies such as that of the defendants and cross-plaintiffs and the price-cutting practices of the conspirators on the markets supplied by the defendants and cross-plaintiffs were unreasonable.

SO FAR AS THE CONTRACT SIGNED BY PHILLIPS BROS. COAL COMPANY IS CONCERNED:

A central part of the understanding and agreement among the alleged conspirators to stabilize prices in the industry, to restrain competition, and to monopolize, was that the terms of the National Bituminous Coal Wage Agreement would be imposed upon the smaller and financially weaker coal companies with the knowledge and intent that these companies in large numbers would go out of business because they could not keep pace with the increasingly higher wage and welfare terms which were designed to meet the ability of the large combines to pay as the mechanization programs of the latter progressed; that the use of the National contract against the small companies for the purpose of driving them and their employees out of the industry could not be achieved if the employees of these small companies were allowed to exercise the right afforded them by the Labor Statutes; that the purposes of the conspiracy were effectuated by the major coal companies' permitting the Union to assume a dominating role over the

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labor force in the coal fields by evasion of the Labor Statutes which protected the rights of the employees of small companies to join a Union or refraining from joining a Union and to select their own bargaining representatives and which statutes forbid Unions from dominating Welfare Funds; that thereby, and pursuant to the intent of the alleged conspirators the employees of the small companies have been deprived of any real choice as to whether they will be represented by the Union or not and whether their bargaining agreement with their employers will be on such a basis that their employers can stay in business and their jobs can be preserved; that the effective use of the National Bituminous Coal Wage Agreement to destroy small companies and the evasion of the labor laws is shown by this case brought by the Trustees and by the circumstances of the making of the contract sued on here by the Trustees; that, in this regard, the Union completely ignored the employees of Phillips Brothers Coal Company, and, having no authority from those employees and without having them as members and without their knowledge, the Union extracted the signing of a copy of the National Bituminous Coal Wage Agreement from Phillips Brothers Coal Company; that several months thereafter, and before the employees knew of or had ratified the contract, and with the use of mobs and in an atmosphere of coercion directed against the company and its employees, the Union shop clause of the contract was enforced by the Union and the employees were required to join the Union in order to go back to work; that they were not given benefit cards under the Welfare Fund until they did join the Union; that it was only under these circumstances that the Union received any authority or right to act as bargaining representative of the employees of Phillips Brothers Coal Company.

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THEORIES UPON WHICH CROSS-DEFENDANT UMW EXPECTS TO DEFEAT RECOVERY:

A. *Theories as to Jurisdiction and Process.*

(1) The Court has not acquired jurisdiction of the UMW on the basis of the purported class action sought to be maintained herein.

(2) The attempted service of process upon UMW under Section 20-225 of Tennessee Code Annotated is ineffectual because said statute is unconstitutional for the reasons heretofore specified to the Court.

(3) UMW is not a necessary or proper party to the original complaint filed and neither Rule 13 nor any of the other Federal Rules of Civil Procedure authorize the issuance of an order bringing in UMW as an additional party.

(4) This Court is without jurisdiction to award any damages for an alleged violation of 29 U.S.C.A., Section 157; 29 U.S.C.A., Section 158; or 29 U.S.C.A., Section 186(a) or (c); and it is without jurisdiction to determine, with regard to the defense asserted to the Trustees' action, whether these Statutes, or any of them, were violated.

B. *Theories With Reference to the Averment that the National Bituminous Coal Wage Agreement and That Agreement As Amended Were Illegal.*

(1) UMW denies that the National Bituminous Coal Wage Agreement of 1950 or that agreement as amended is violative of the Federal statutes and particularly that such contract contains language which unlawfully encourages the employees of coal companies that sign the agreement to become union members in violation of the Federal statutes.

(2) UMW denies that the language in the National Bituminous Coal Wage Agreement of 1950 and its amendments which deal with the qualification for benefits under

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the Welfare Fund or any other language in said contract was inserted for the purpose of unlawfully encouraging employees to join the union in defiance of, or in violation of, the labor laws or any other laws of the United States.

(3) UMW denies that any activities engaged in by it individually or with the trustees constituted or was pursuant to a conspiracy for the purpose of creating a practical construction that the Fund was solely for the benefit of UMW members.

(4) UMW denies that the District Court has any jurisdiction to determine the legality or non-legality of conduct under Section 8, or any of the other provisions, of the National Labor Relations Act (29 U.S.C.A. 141 et seq): It further denies that any conduct, which is asserted to have been illegal under the provisions of such Section 8 or of said Act, will sustain a charge of violation of the Sherman Act.

C. Theories With Reference to the Alleged Violation of the Sherman Act.

(1) UMW denies that it has entered into any contract or joined in any combination or conspiracy in restraint of trade or commerce in violation of the Sherman Act.

(2) It denies that it has monopolized or attempted to monopolize or that it combined or conspired with any other person or persons or group of persons to monopolize any part of the trade or commerce among the several states or with foreign nations.

(3) By virtue of Section 17 of the Clayton Act (15 U.S.C.A. 17) and by virtue of the provisions of the Norris-LaGuardia Act (29 U.S.C.A. 101 et seq.), the negotiations and execution by the union of the National Bituminous Coal Wage Agreement of 1950, and that Agreement as amended, and UMW's acts and conduct in connection with the en-

forcement thereof do not constitute a violation of the Sherman Act.

(4) UMW is a labor organization within the meaning of Section 17 of the Clayton Act and it acted as such for its members in the negotiations for and execution of the collective bargaining agreements known as the National Bituminous Coal Wage Agreement of 1950 and the amendments thereto.

(5) UMW denies that there was upon its part any conspiratorial conduct or any wrongful conduct, or that it committed any wrongful, conspiratorial, illegal or monopolistic acts violative of the Sherman Act, and that in the period of time involved herein all of the acts done by UMW and involved in this action were motivated by legitimate labor goals and for the purpose of securing union standards of wages and better conditions of employment for its members.

(6) UMW denies that it participated in, or that it authorized or ratified any acts of violence complained of by cross-plaintiff herein.

(7) It denies that in any of the activities complained of in this case it conspired or joined with coal operators or any other non-labor groups for any purpose or in any manner.

(8) It contends that the mechanization of mines and the changes in mining methods which have occurred in and since 1950 are not the result of any conspiracy or any effort to restrain trade or any effort to create a monopoly, nor have such occurred by reason of wrongful conduct on its part, but that such changes have occurred as an outgrowth, result and development of the American economy in the industry over the years.

(9) It denies that there was upon its part any conspira-

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torial conduct or any wrongful conduct, or that it committed any wrongful, illegal, conspiratorial or monopolistic acts in connection with the actions which were had under the Walsh-Healey Act for the establishment of wages for those employed in the mining industry.

(10) It denies that cross-plaintiffs have any right to rely upon any proceedings with respect to a Walsh-Healey minimum wage rate determination or that the cross-plaintiffs have any right to introduce evidence thereon or on the effect thereof either as a basis of liability under the Sherman Act or as a part of an alleged conspiracy under said Act.

(11) It denies that it was properly joined as a cross-defendant in this cause.

(12) UMW also asserts as theories of defense the theories upon which the Trustees expect to defeat the defensive claim of Pennington to the extent that such theories may become material and applicable in defense of the claim asserted by Pennington against UMW.

(13) UMW denies that cross-plaintiffs were damaged as a proximate and direct result of any acts on its part.

**TRIAL OF THE CROSS-CLAIM AGAINST
UNITED MINE WORKERS OF AMERICA:**

The issues under the cross-claim of James M. Pennington, et al, against United Mine Workers of America, as presented in the respective theories of those parties set out above, will be decided by the jury and the jury will be presented the following specific issues:

**ISSUES FOR THE JURY ON THE CROSS-CLAIM OF
JAMES M. PENNINGTON, ET AL, AGAINST THE
CROSS-DEFENDANT, UNITED MINE WORKERS OF AMERICA:**

1. Did the cross-defendant, United Mine Workers of

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America, engage in a combination or conspiracy so as to unreasonably restrain trade or to monopolize commerce among the several states and which combination is outside or beyond the exemption granted by the anti-trust statutes to a labor organization, as alleged by the cross-plaintiffs, James M. Pennington, et al?

2. If the answer to question 1 is "No," the remaining questions need not be answered. If your answer to question 1 is "Yes," name the conspirators shown by the proof to have been involved in the alleged conspiracy.

3. (If the answer to question 1 is "Yes") Were the cross-plaintiffs, James M. Pennington, et al, doing business as Phillips Bros. Coal Co., damaged in their business or property proximately and as a direct result of the conspiracy? (Check only one space) Yes----- No-----

4. (If the answer to question 3 is "Yes") Our verdict for cross-plaintiffs, James M. Pennington, et al, is for \$-----

**TRIAL OF CLAIM OF THE TRUSTEES AGAINST DEFENDANTS,
JAMES M. PENNINGTON, ET AL:**

The claim of the plaintiff Trustees, John L. Lewis, et al, against defendants, James M. Pennington, et al, as presented in the respective theories of those parties set out above, will be decided by the jury and the jury will be presented the following specific issue:

Did the plaintiff Trustees engage in a combination or conspiracy, so as to unreasonably restrain trade or to monopolize commerce among the several states, as alleged by the defendants, James M. Pennington, et al? (Check only one space) Yes----- No-----

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THEORIES UPON WHICH PLAINTIFF TRUSTEES EXPECT TO DEFEAT THE CLAIM OF DEFENDANTS THAT THE COLLECTIVE BARGAINING AGREEMENT WAS UNENFORCEABLE BECAUSE OF AN ALLEGED CONSPIRACY:

(1) With reference to the defense of conspiracy as asserted against the Trustees, they rely upon all of the matters raised as defenses by the UMW insofar as they are applicable.

(2) The Trustees deny that in the administration and enforcement of the trust fund they have surrendered their duties and obligations to the UMW.

(3) The Trustees say that their conduct or actions in instituting this particular suit or any other suits which they may have instituted for the collection of Welfare Funds was not in furtherance of any conspiracy or of any monopolistic intent but assert that their conduct and actions in this respect were in furtherance of their duties and obligations under the trust.

(4) The Trustees deny that the United Mine Workers of America was properly joined as a cross-defendant in this cause.

(5) The Trustees deny that they have any control of or right to exert control over or that they have exerted control over the actions of the beneficiaries of the Fund.

(6) The Trustees deny that the right to receive or retain benefits of the Fund is dependent on membership in the United Mine Workers of America.

Both UMW and the Trustees say that if there was any interference with the production of coal by the cross-plaintiffs the amount of interference or reduction in production was not sufficient to bring any claim or to sustain any claim for violation of any provision of the Sherman Act.

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Both the UMW and the Trustees deny that the cross-plaintiffs suffered any damages as a result of any illegal or wrongful action or conduct on the part of either of them.

STIPULATIONS:

(1) It is understood that the sole basis for recovery as asserted by the cross-plaintiffs against the cross-defendant Union in this action is the Sherman Anti-Trust Act and it is expressly understood that no claim under the common law of the State of Tennessee or the common law of any other State or on any other theory is involved in this litigation.

(2) No objection will be made to the convention minutes or to the Journal of the Union because they are copies but the Union and the Trustees reserve the right to object to the introduction of such matters as evidence because of incompetency, irrelevancy and immateriality.

(3) The damage period, so far as the cross-claim of Phillips Brothers Coal Company against the United Mine Workers of America is concerned, is from March 5, 1954, through December 31, 1958.

(4) The parties will exchange Exhibits which they believe they will introduce (except for those to be introduced for impeachment purposes) a reasonable time prior to their introduction in evidence.

(5) By April 14, 1961, the parties shall disclose to each other the witnesses whom they then expect to use at the trial.

By approving this order the plaintiff Trustees and Cross-Defendant, Union Mine Workers of America, do not waive their exceptions to the previous order of the Court wherein the claim of the Trustees and the cross-claim of James M. Pennington, et al, were consolidated for trial.

Motion of U. M. W. for Judgment or New Trial

Filed May 29, 1961

**Motion of United Mine Workers of America for Judgment in
Accordance with Motions for Directed Verdict or in the
Alternative Motion for a New Trial**

The cross-defendant United Mine Workers of America moves the Court to set aside the verdict of the jury and to enter judgment in its favor in accordance with its motions for directed verdict for the following grounds or reasons:

1. Under the law, the applicable Federal Rules of Civil Procedure, and the state of the pleadings this action cannot be maintained against this cross-defendant, United Mine Workers of America.
2. The evidence is insufficient in law to sustain a verdict for the cross-plaintiff.
3. Under the applicable law and the proof in this record cross-plaintiff is not entitled to a judgment against this cross-defendant.

If the foregoing motion be denied, the cross-defendant United Mine Workers of America moves in the alternative that the verdict be set aside and that it be granted a new trial for the following grounds or reasons, among others:

1. The evidence is insufficient to support the verdict.
2. The verdict is against the weight of the evidence.
3. There is not sufficient or substantial evidence to support the amount of the jury's verdict.
4. The verdict manifests passion, prejudice and caprice and is the result thereof.
5. The amount of the verdict manifests passion, prejudice and caprice and is the result thereof.

Motion of U. M. W. for Judgment or New Trial

6. The verdict of the jury is contrary to the charge of the Court and to the law applicable to this case.

7. The Court erred in admitting in evidence matters pertaining to rail rate reductions which were made subsequent to December 31, 1958.

8. The Court erred in admitting evidence on sales of coal made by alleged conspirators subsequent to December 31, 1958.

9. The Court erred in admitting in evidence Exhibits 48, 75 and 76; all relating to a pledge of security for a bank loan to North Fork Coal Company, which transaction occurred subsequent to December 31, 1958.

10. The Court erred in admitting evidence concerning the acquisition of properties by alleged co-conspirators after December 31, 1958.

11. The Court erred in permitting the introduction in evidence of Exhibit 47 which purports to be a copy of a speech by the president of Pittston Coal Company, which speech was made subsequent to December 31, 1958.

12. The Court erred in admitting evidence of matters in addition to those set forth above and which dealt with occurrences subsequent to December 31, 1958.

13. The Court erred in admitting in evidence the statements alleged to have been made by officers or representatives of alleged co-conspirators before prima facie evidence of the existence of such alleged conspiracy was presented.

14. The Court erred in admitting evidence with regard to the petitions filed with and activities before the Secretary of Labor for the determination of the prevailing wage in various areas in the bituminous coal industry under the

Motion of U. M. W. for Judgment or New Trial

Walsh-Healey Act and in admitting evidence of the action of the Secretary of Labor thereon.

15. The Court erred in admitting in evidence the statement of the Secretary of Labor with respect to the action taken by him on petitions filed to determine the prevailing wage for various areas in the bituminous coal industry under the Walsh-Healey Act.

16. The Court erred in admitting Exhibit 41 which was introduced to show a comparison of the various prevailing wage rates determined by the Secretary of Labor under the Walsh-Healey Act in various industries.

17. The Court erred in admitting other evidence concerning the enforcement of the Walsh-Healey Act by the Department of Labor as it was applicable to the bituminous coal industry.

18. The Court erred in admitting in evidence Exhibit 43 which purports to show a statement by the Secretary of the Department of Labor concerning enforcement of mine safety laws and regulations.

19. The Court erred in admitting evidence of efforts on the part of coal operators to obtain lower freight rates pertaining to the shipment of coal.

20. The Court erred in admitting Exhibit 33 in evidence which purported to set forth the requirements of eligibility for benefits under the Welfare and Retirement Fund created under the Bituminous Coal Wage Agreement of 1947.

21. The Court erred in admitting evidence as to the understanding of cross-plaintiffs' employees on eligibility requirements for benefits from the Welfare and Retirement Fund.

22. The Court erred in admitting evidence to the effect that persons drawing pensions from the United Mine Work-

• Motion of U. M. W. for Judgment or New Trial

ers of America Welfare and Retirement Fund engaged in picketing or related activities.

23. The Court erred in admitting into evidence the statements of objections to interrogatories calling upon the Trustees of the United Mine Workers of America Welfare and Retirement Fund to identify non-union recipients of benefits and in directing the reading of the comment thereon by the witness Lewis.

24. The Court erred in permitting the introduction of evidence on the action of the United Mine Workers of America in establishing a membership committee during the effective periods of the 1947 and 1948 collective bargaining agreements and in admitting evidence relative to the action of such committee.

25. The Court erred in admitting evidence on other suits instituted by the Trustees of the Welfare and Retirement Fund to collect delinquent amounts owing the Fund.

26. The Court erred in admitting evidence concerning purported violence and other activities and matters pertaining thereto.

27. The Court erred in admitting evidence concerning the union security provisions of the National Bituminous Coal Wage Agreement of 1950 and its amendments. The Court's statements and instructions to the jury at numerous times during the trial with reference to such provisions were erroneous and had a tendency to confuse the jury. It was error for cross-plaintiffs' counsel to refer repeatedly to the union security provisions of the collective bargaining agreement as a union shop clause, and it was error for the Court to instruct the jury that such contract provisions do not constitute an effective union shop clause.

28. The Court erred in admitting evidence concerning this cross-defendant's compliance with certain provisions of

*Motion of U. M. W. for Judgment or New Trial***Section 9(f), (g) and (h) of the Taft-Hartley Act.**

29. The Court erred in permitting counsel for cross-plaintiffs to follow a pattern of asking objectionable questions and, upon objection, withdrawing such questions.

30. The Court erred in permitting the admission of evidence with reference to the extent of unemployment in coal producing areas.

31. The Court erred in admitting in evidence Exhibit 122 styled "Report on Unemployment in Coal Mining Industry, June 10, 1957."

32. The Court erred in admitting evidence on the so-called land lease and protective wage clauses of the National Bituminous Coal Wage Agreement.

33. It was error to admit into evidence a statement of all the assets and investments of this cross-defendant.

34. It was error to admit evidence concerning transactions between the United Mine Workers of America and Cyrus Eaton and/or the Chertsey Corporation involving Chesapeake and Ohio Railroad Company stock.

35. It was error for the Court to admit evidence concerning transactions involving the sale and ownership of the stock of the National Bank of Washington.

36. It was error to admit evidence concerning transactions between Cyrus Eaton and United Mine Workers of America involving the purchase and sale of stocks in various utility companies.

37. It was error to admit in evidence Exhibits 54 through 66 and testimony relating thereto.

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38. It was error to admit in evidence the statement concerning Consolidated Coal Company as set forth in Moody's Industrial Manual for 1960.

39. The Court erred in admitting evidence concerning the acquisition of other coal operations by Pittston Coal Company.

40. The Court erred in admitting evidence concerning the activities relating to alleged unfair labor practices at the operations of Peabody Coal Company and its subsidiaries.

41. The Court erred in admitting in evidence the two letters sent to Peabody Coal Company and its affiliates concerning the collective bargaining contract of Peabody and the Progressive Mine Workers.

42. The Court erred in admitting in evidence the statement from Moody's Industrial Manual on Peabody Coal Company to show "how big" Peabody Coal Company is, and in the remarks made at the time of this introduction (Tr. p. 1391).

43. The Court erred in admitting in evidence the contents of the Hugh White letter of July 1, 1957.

44. The Court erred in admitting in evidence the deposition of Dino Fratiglioni.

45. The Court erred in admitting in evidence Exhibit 96.

46. The Court erred in admitting the testimony of witness Martin Hochdorf relative to TVA computations concerning the generation of electricity.

47. The Court erred in admitting the testimony of Taylor Maddox relative to the closure of certain mines in Tennessee.

Motion of U. M. W. for Judgment or New Trial

48. The Court erred in admitting evidence purporting to show a comparison in the price paid by Tampa Electric Company and Duke Power Company for coal with the price paid by TVA.

49. The Court erred in admitting in evidence bids of DeBardeleben Coal Company and Truax-Traer Coal Company for the sale of coal to the TVA.

50. The Court erred in permitting the witness I. E. Schmidt to express an opinion on whether bidding practices of certain companies on the TVA spot market indicated a pattern or trend.

51. The Court erred in admitting evidence of term contracts awarded by TVA to certain coal companies.

52. The Court erred in admitting evidence relative to the Nashville Coal Company—Tampa Electric Company litigation.

53. The Court erred in admitting evidence relative to the purchase of coal by Tampa Electric Company from Love and Amos Coal Company.

54. The Court erred in admitting evidence on the purchase of coal by Tampa Electric Company from Peabody Coal Company in 1958 and in admitting into evidence the Tampa Electric Company—Peabody Coal Company contract of 1959.

55. The Court erred in admitting into evidence proof that the deposition of the witness John Amos was taken in certain other litigation in January of 1958 and in admitting into evidence testimony concerning the purported significance thereof.

56. The Court erred in admitting in evidence facts purporting to show a comparison in the growth of the TVA

Motion of U. M. W. for Judgment or New Trial

steam coal market with that of other steam coal markets and in purporting to show the delivered costs of steam coal to different markets.

57. The Court erred in holding that hypothetical question asked of the witness Amos was proper and permitting the same to be answered as such question and answer appear at page 1868 of the transcript.

58. The Court erred in permitting the introduction of evidence as to the national average price F.O.B. mine of all bituminous coals as a basis for comparison with the average price of Phillips Brothers' steam coal F.O.B. Phillips Brothers mine.

59. The Court erred in admitting evidence purporting to explain why the witness Hutson had surrendered the hospital card which had been issued to him by the Welfare and Retirement Fund.

60. The Court erred in admitting in evidence proof with reference to the mechanization of their respective mining operations by the West Kentucky Coal Company, the Peabody Coal Company, and the other coal companies who are alleged in this case to be co-conspirators and in permitting the jury to take into consideration in arriving at its verdicts the fact of such mechanization.

60a. The Court erred in admitting testimony with reference to commercial transactions of various coal or coal mining companies.

61. The Court erred in admitting testimony of the witness Sturgill of Kentucky Oak Mining Company and of other witnesses connected with other coal or mining companies, which companies are not alleged to be co-conspirators, concerning their transactions or transactions of their companies with other coal companies and/or with the TVA.

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62. The Court erred in failing to submit to the jury as a part of its charge cross-defendant's Revised Requests Nos. 37, 49, 50, 53(a), 58 and 63.

63. The Court erred in refusing cross-defendant's motion that the jury be required, as a part of its answer to Verdict Form No. 2 submitted by the court, to specify the names of the parties to any conspiracy found.

64. The Court erred in entering the verdict of the jury.

65. The Court committed material error in charging the jury thusly (T. 3459):

"Similarly, unions act through their officers, agents, employees and members and no union participating or interested in a labor dispute may be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in, or actual authorization of, such act, or of ratification of such acts after actual knowledge thereof."

66. The Court committed material error in charging the jury thusly (T. 3459):

"Before you can return a verdict that the Union attempted to monopolize the bituminous coal industry, specific intent to restrain trade or to build a monopoly is necessary in order to violate Sections 1 and 2 of the Sherman Act, where the acts committed by the party or parties charged fall short of the results prohibited by the Act. But, if restraint of trade or monopoly results as the consequence of the cross-defendants' conduct or alleged conduct, or alleged business arrangement, specific intent to restrain or monopolize is not necessary in order to find that Sections 1 and 2 of the Act have been violated."

Motion of Trustees for Judgment or New Trial

And in charging the jury thusly (T. 3458):

"It is not necessary to find a specific intent to restrain trade or to build a monopoly in order to find that the anti-trust laws have been violated. It is sufficient that a restraint of trade results as the consequence of the alleged conspirators' conduct or business arrangements."

67. The Court erred in permitting the consolidation for trial of the Plaintiff-Trustees' action against the original defendants with the cross action of cross-plaintiffs against the United Mine Workers of America and in overruling cross-defendant's objections to cross-plaintiffs' motion to such consolidation.

68. There is no material evidence to show that this cross-defendant conspired with each of the coal companies which is alleged to be a co-conspirator and hence the Court erred in failing to sustain cross-defendant's motion for a partial directed verdict as to each and all of said alleged co-conspirators.

Filed May 29, 1961

Motion of John L. Lewis, Henry G. Schmidt and Josephine Roche, As Trustees of the United Mine Workers of America Welfare and Retirement Fund, for Judgment in Accordance with Motions for Directed Verdict or in The Alternative Motion for a New Trial

The plaintiffs, John L. Lewis, Henry G. Schmidt and Josephine Roche, as Trustees of the United Mine Workers of America Welfare and Retirement Fund, move the Court to set aside the verdict of the jury and to enter judgment

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in their favor in accordance with their motions for directed verdict for the following grounds or reasons:

1. The evidence is insufficient in law to sustain the jury verdict that the Trustees engaged in a combination or conspiracy so as to unreasonably restrain trade or monopolize commerce among the several states as alleged by the defendants.

2. Under the applicable law and the proof in this record plaintiffs are entitled to a judgment against the defendants for \$55,982.62 with interest thereon.

If the foregoing motion be denied, the plaintiff-Trustees move in the alternative that said verdict be set aside and that they be granted a new trial for the following grounds or reasons, among others:

1. The evidence is insufficient to support the verdict.
2. The verdict is against the weight of the evidence.
3. The verdict manifests passion, prejudice and caprice and is the result thereof.
4. The verdict of the jury is contrary to the charge of the Court, and to the law applicable to this case.
5. The Court erred in overruling plaintiff-Trustees' motion to vacate its order granted under Rule 13(h), Federal Rules of Civil Procedure.
6. The Trial Court erred in its order of April 10, 1961, consolidating the trial of the claim of plaintiffs in the original complaint against defendant and the trial of the claim of cross-plaintiffs against cross-defendant.
7. The Court erred in admitting Exhibit 33 in evidence, which purported to set forth the requirements of eligibility for benefits under the Welfare and Retirement Fund created under the Bituminous Coal Wage Agreement of 1947.
8. The Court erred in admitting evidence as to the under-

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standing of cross-plaintiffs' employees on eligibility requirements for benefits from the Welfare and Retirement Fund.

9. The Court erred in admitting evidence to the effect that persons drawing pensions from the United Mine Workers of America Welfare and Retirement Fund engaged in picketing or related activities.

10. The Court erred in admitting into evidence the statements of objections to interrogatories calling upon the Trustees of the United Mine Workers of America Welfare and Retirement Fund to identify non-union recipients of benefits and in directing the reading of the comment thereon by the witness Lewis.

11. The Court erred in permitting the introduction of evidence on the action of the United Mine Workers of America in establishing a membership committee during the effective periods of the 1947 and 1948 collective bargaining agreements and in admitting evidence relative to the action of such committee.

12. The Court erred in admitting evidence on other suits commenced by the Trustees of the Welfare and Retirement Fund to collect delinquent amounts owing the Fund.

13. The Court erred in admitting in evidence the contents of the Hugh White letter of July 1, 1957.

14. The Court erred in admitting evidence purporting to explain why the witness Hutson had surrendered the hospital card which had been issued to him by the Welfare and Retirement Fund.

15. The Court erred in admitting in evidence matters pertaining to rail rate reductions which were made subsequent to December 31, 1958.

16. The Court erred in admitting evidence on sales of

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coal made by alleged conspirators subsequent to December 31, 1958.

17. The Court erred in admitting in evidence Exhibits 48, 75 and 76, all relating to a pledge of security for a bank loan to North Fork Coal Company, which transaction occurred subsequent to December 31, 1958.

18. The Court erred in admitting evidence concerning the acquisition of properties by alleged co-conspirators after December 31, 1958.

19. The Court erred in permitting the introduction in evidence of Exhibit 47 which purports to be a copy of a speech by the president of Pittston Coal Company, which speech was made subsequent to December 31, 1958.

20. The Court erred in admitting evidence of matters in addition to those set forth above which dealt with occurrences subsequent to December 31, 1958.

21. The Court erred in admitting in evidence the statements alleged to have been made by officers or representatives of alleged co-conspirators before prima facie evidence of the existence of such alleged conspiracy was presented.

22. The Court erred in admitting evidence with regard to the petitions filed with and the activities before the Secretary of Labor for the determination of the prevailing wage in various areas in the bituminous coal industry under the Walsh-Healey Act and in admitting evidence of the action of the Secretary of Labor thereon.

23. The Court erred in admitting in evidence the statement of the Secretary of Labor with respect to the action taken by him on petitions filed to determine the prevailing wage for various areas in the bituminous coal industry under the Walsh-Healey Act.

24. The Court erred in admitting Exhibit 41 which was introduced to show a comparison of the various prevailing

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wage rates determined by the Secretary of Labor under the Walsh-Healey Act in various industries.

25. The Court erred in admitting other evidence concerning the enforcement of the Walsh-Healey Act by the Department of Labor as it was applicable to the bituminous coal industry.

26. The Court erred in admitting in evidence Exhibit 43 which purports to show a statement by the Secretary of the Department of Labor concerning enforcement of mine safety laws and regulations.

27. The Court erred in admitting evidence of efforts on the part of coal operators to obtain lower freight rates pertaining to the shipment of coal.

28. The Court erred in admitting evidence concerning purported violence and other activities and matters pertaining thereto.

29. The Court erred in admitting evidence concerning the union security provisions of the National Bituminous Coal Wage Agreement of 1950 and its amendments. The Court's statements and instructions to the jury at numerous times during the trial with reference to such provisions were erroneous and had a tendency to confuse the jury. It was error for cross-plaintiffs' counsel to refer repeatedly to the union security provisions of the collective bargaining agreements as a union shop clause, and it was error for the Court to fail to instruct the jury that such contract provisions do not constitute an effective union shop clause.

30. The Court erred in admitting evidence concerning this cross-defendant's compliance with certain provisions of Section 9(f), (g) and (h) of the Taft-Hartley Act.

31. The Court erred in permitting counsel for cross-plaintiffs to follow a pattern of asking objectionable questions and, upon objection, withdrawing such questions.

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32. The Court erred in admitting evidence on the so-called land lease and protective wage clauses of the National Bituminous Coal Wage Agreement.

33. The Court erred in admitting in evidence a statement of all the assets and investments of this cross-defendant.

34. The Court erred in admitting evidence concerning transactions between the United Mine Workers of America and Cyrus Eaton and/or the Chertsey Corporation involving Chesapeake and Ohio Railroad stock.

35. The Court erred in admitting evidence concerning transactions involving the sale and ownership of the stock of the National Bank of Washington.

36. The Court erred in admitting evidence concerning transactions between Cyrus Eaton and United Mine Workers of America involving the purchase and sale of stocks in various utility companies.

37. The Court erred in admitting in evidence Exhibits 54 through 66 and testimony relating thereto.

38. The Court erred in admitting in evidence the statements concerning Consolidated Coal Company and Island Creek Coal Company as set forth in Moody's Industrial Manual for 1960.

39. The Court erred in admitting evidence concerning the acquisition of other coal operations and/or additional coal properties by Pittston Coal Company.

40. The Court erred in admitting evidence concerning the activities relating to alleged unfair labor practices at the operations of Peabody Coal Company and its subsidiaries.

41. The Court erred in admitting in evidence the two letters sent to Peabody Coal Company and its affiliates

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concerning the collective bargaining contract of Peabody and the Progressive Mine Workers.

42. The Court erred in admitting in evidence the statement from Moody's Industrial Manual on Peabody Coal Company to show "how big" Peabody Coal Company is, and in the remarks made at the time of this introduction (Transcript L: 1391).

43. The Court erred in admitting in evidence the deposition of Dino Fratiglioni.

44. The Court erred in admitting in evidence Exhibit 96.

45. The Court erred in admitting the testimony of witness Martin Hochdorf relative to TVA computations concerning the generation of electricity.

46. The Court erred in admitting the testimony of Taylor Maddox relative to the closure of certain mines in Tennessee.

47. The Court erred in admitting evidence purporting to show a comparison in the price paid by Tampa Electric Company and Duke Power Company for coal with the price paid by TVA.

48. The Court erred in admitting evidence relative to the Nashville Coal Company—Tampa Electric Company litigation.

49. The Court erred in admitting evidence relative to the purchase of coal by Tampa Electric Company from Love and Amos Coal Company.

50. The Court erred in admitting evidence on the purchase of coal by Tampa Electric Company from Peabody Coal Company in 1958 and in admitting into evidence the Tampa Electric Company—Peabody Coal Company contract of 1959.

51. The Court erred in admitting into evidence proof

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that the deposition of the witness, John Amos, had been taken in certain other litigation in January of 1958 and in admitting into evidence testimony concerning the purported significance thereof.

52. The Court erred in holding that the hypothetical question asked of the witness Amos was proper and in permitting the same to be answered as such question and answer appear at page 1868 et seq of the transcript.

53. The Court erred in admitting in evidence bids of DeBardleben Coal Company and Truax-Traer Coal Company for the sale of coal to the TVA.

54. The Court erred in permitting the witness T. E. Schmidt to express an opinion on whether bidding practices of certain companies on the TVA spot market indicated a pattern or trend.

55. The Court erred in admitting evidence of term contracts awarded by TVA to certain coal companies.

56. The Court erred in admitting in evidence facts purporting to show a comparison in the growth of the TVA steam coal market with that of other steam coal markets and in purporting to show the delivered costs of steam coal to different markets.

57. The Court erred in permitting the introduction of evidence as to the national average price F.O.B. mine of all bituminous coals as a basis for comparison with the average price of Phillips Brothers' steam coal F.O.B. Phillips Brothers mine.

58. The Court erred in permitting the admission of evidence with reference to the extent of unemployment in coal producing areas.

59. The Court erred in admitting in evidence Exhibit 122 styled "Report on Unemployment in Coal Mining Industry, June 10, 1957."

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60. The Court erred in admitting in evidence proof with reference to the mechanization of their respective mining operations by the West Kentucky Coal Company, the Peabody Coal Company and the other coal companies who are alleged in this case to be co-conspirators and in permitting the jury to take into consideration in arriving at its verdicts the fact of such mechanization.

60a. The Court erred in admitting testimony with reference to commercial transactions of various coal or coal mining companies.

61. The Court erred in admitting testimony of the witness Sturgill of Kentucky Oak Mining Company and of other witnesses connected with other coal or mining companies, which companies are not alleged to be co-conspirators, concerning their transactions or transactions of their companies with other coal companies and/or with the Tennessee Valley Authority.

62. The Court erred in failing to submit to the jury as a part of his charge cross-defendant's Revised Requests Nos. 37, 49, 50, 53(a), 58 and 63.

63. The Court erred in entering the verdict of the jury.

64. The Court committed material error in charging the jury thusly (T. 3459):

"Similarly, unions act through their officers, agents, employees and members and no union participating or interested in a labor dispute may be held responsible or liable in any court of the United States for the unlawful acts of individual officer, members or agents, except upon clear proof of actual participation in, or actual authorization of, such act, or of ratification of such acts after actual knowledge thereof."

65. The Court committed material error in charging the jury thusly (T. 3459):

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"Before you can return a verdict that the Union attempted to monopolize the bituminous coal industry, specific intent to restrain trade or to build a monopoly is necessary in order to violate Sections 1 and 2 of the Sherman Act, where the acts committed by the party or parties charged fall short of the results prohibited by the Act. But, if restraint of trade or monopoly results as the consequence of the cross-defendants' conduct, or alleged conduct, or alleged business arrangements, specific intent to restrain or monopolize is not necessary in order to find that Sections 1 and 2 of the Act have been violated."

And in charging the jury thusly (T. 3458):

"It is not necessary to find a specific intent to restrain trade or to build a monopoly in order to find that the anti-trust laws have been violated. It is sufficient that a restraint of trade results as the consequence of the alleged conspirators' conduct or business arrangements."

66. There is no material evidence to show that the plaintiffs conspired with any of the coal companies which is alleged to be a co-conspirator and hence the Court erred in failing to sustain plaintiffs' motion for a partial directed verdict as to each and all of said alleged co-conspirators.

Entered August 2, 1961

Judgment

This case came on to be heard before the Honorable Robert L. Taylor, Judge, upon the verdict of the jury, the motion of the plaintiffs-trustees, John L. Lewis, et al, for judgment notwithstanding the verdict of the jury and in the alternative for a new trial, and also upon the motion of the cross-defendant, United Mine Workers of America, for judgment notwithstanding the verdict of the jury and in

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the alternative for a new trial, together with the petition and supporting affidavits of cross-plaintiffs for the allowance of attorneys' fees, and upon the entire record in the case and the Court having fully considered thereof together with the briefs and arguments of counsel is of the opinion and doth hold and adjudge for reasons stated in a memo delivered from the Bench that there is no material or substantial evidence in this record to support the finding of the jury that the Trustees engaged in a combination or conspiracy so as to unreasonably restrain trade or monopolize or attempt to monopolize commerce among the several states as alleged by the original defendants, James M. Pennington, Raymond E. Phillips, and Lillian Goad Phillips, Administratrix of the Estate of Burse Phillips, deceased, and the partnership known as Phillips Brothers Coal Company.

WHEREFORE IT IS ORDERED AND DECREED that the verdict of the jury in so finding be set aside and the Court doth award the plaintiffs-trustees judgment for a portion of the claim asserted herein by them, finding and holding that said Trustees are entitled to have and recover royalty upon the quantity of coal produced for use or sale by the defendants, James M. Pennington, Raymond E. Phillips and Lillian Goad Phillips, Administratrix of the Estate of Burse Phillips, deceased, and the partnership Phillips Brothers Coal Company, only for the period from and after April 25, 1955 to and including December 31, 1958, or a total of 108,560.56 tons, at the rate of Forty Cents (\$0.40) per ton, or the sum of Forty-three Thousand, Four Hundred Twenty-four and 22/100 (\$43,424.22) Dollars.

The Court doth further hold and adjudge that the motion of the cross-defendent, United Mine Workers of America, for judgment notwithstanding the verdict of the jury and in the alternative for a new trial is not well made, and, therefore, the same, and each and every ground of said motion as stated in both alternatives, is overruled.

WHEREFORE, IT IS ORDERED AND ADJUDGED that the cross-

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plaintiffs, James M. Pennington, Raymond E. Phillips and Lillian Goad Phillips, Administratrix of the Estate of Burse Phillips, deceased, and the partnership Phillips Brothers Coal Company, have and recover of the cross-defendant, United Mine Workers of America, in accordance with the applicable statutes, the sum of Two Hundred Seventy Thousand (\$270,000.00) Dollars, being three times the amount of damages awarded by the jury, and also that they have and recover the additional sum of Fifty-five Thousand (\$55,000.00) Dollars which the Court finds to be a reasonable amount of attorneys' fees to be awarded and assessed in accordance with the applicable statutes, thus making a total award in favor of said cross-plaintiffs and against the cross-defendant, United Mine Workers of America, in the amount of Three Hundred Twenty-five Thousand Dollars (\$325,000.00).

It is further ordered and adjudged pursuant to the previous order of the Court that the counterclaim filed in this case against said Trustees by the defendants and cross-plaintiffs be, and the same hereby is, dismissed.

It is also ordered and adjudged that the costs in this cause shall be taxed after the time for appeal expires or after the disposition of the cause on appeal.

It is further ordered that execution issue in favor of the plaintiffs-trustees, John L. Lewis, et al., against the defendants, James M. Pennington, Raymond E. Phillips and Lillian Goad Phillips, Administratrix of the Estate of Burse Phillips, deceased, and Phillips Brothers Coal Company, for the said sum of Forty-Three Thousand, Four Hundred Twenty-four and 22/100 Dollars (\$43,424.22), and that execution issue in favor of the cross-plaintiffs, James M. Pennington, Raymond E. Phillips, and Lillian Goad Phillips, Administratrix of the Estate of Burse Phillips, deceased, and Phillips Brothers Coal Company, against the said cross-defendant, United Mine Workers of America, for the

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said sum of Three Hundred Twenty-five Thousand Dollars (\$325,000.00).

Filed July 31, 1961

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This case was tried to a jury and the Court and consumed approximately five weeks of trial time. The jury returned a verdict on May 19, 1961 in response to two verdict forms, the pertinent parts of which read as follows:

"1. Did the cross-defendant, U.M.W., engage in a combination or conspiracy so as to unreasonably restrain trade or monopolize or attempt to monopolize commerce among the several states outside and beyond the exemption created by the anti-trust statutes to a labor organization as alleged by cross-plaintiff, Phillips Brothers Coal Company?"

The jury answered "yes".

"2. If your answer to Question 1 is Yes, was cross-plaintiff, Phillips Brothers Coal Company, damaged in its business or property as a direct and proximate result of the conspiracy?"

The jury answered "yes".

"3. We find in favor of cross-plaintiff, Phillips Brothers Coal Company, and fix its damages in the amount of \$90,000.00."

The other verdict form is as follows:

"1. Did the Trustees engage in a combination or conspiracy so as to unreasonably restrain trade or monopolize commerce among the several states, as alleged by the original defendant, Phillips Brothers Coal Company?"

The jury answered "yes".

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For convenience the International Union will be referred to as U.M.W.; James M. Pennington, et al, as Phillips Brothers; and Messrs. John L. Lewis, Henry G. Schmidt and Miss Josephine Roche as Trustees.

U.M.W. has moved the Court to set aside the verdict of the jury and render a judgment in its favor, and has urged in its support three separate grounds which, for practical purposes, raise the question of the sufficiency of the evidence to support the verdict of the jury.

U.M.W., in the alternative, has moved for a new trial and urged in its support 68 separate grounds. Several of the grounds set forth in the alternative motion are directed to the question of the sufficiency of the evidence.

The effect of the finding of the jury is that the U.M.W. conspired with large coal companies to stabilize prices in the coal industry around the year 1950 in violation of Sections 1 and 2 of the Sherman Anti-Trust Laws.

Some of the circumstances relied upon by Phillips Brothers to support their contention that the parties combined and conspired to fix the cost of production of coal so high that the small operators could not operate successfully are: That the large operators and the union agreed to make every effort to put all producers of coal under union contract with the U.M.W. That after 1950 wages were increased without waiting for the previous contract between the union and the operators to expire. That the increases were geared to meet the abilities of the major companies to pay. That the increases were forced on the small companies with knowledge that they could not pay them. That the large coal companies contested controversial provisions in the wage agreements prior to 1950, for example, those on union security, welfare, days of work, labor costs, rates of pay, while the large operators subsequent to this period permitted the Union to write these provisions into the wage provision contracts without protest. That one purpose of the unlaw-

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ful agreement between U.M.W. and the large coal operators was to drive Phillips Brothers and other small operators out of business.

It is claimed that the Union was given control of the Welfare Fund; that Union membership clauses in the contract which were legal prior to 1950 continued to be observed by U.M.W. and by the large coal operators; that the Union used its funds to finance some of the major companies; that it purchased stock in one or more coal companies and advanced large sums of money to Mr. Eaton to invest in the West Kentucky Coal Company and accepted stock in that company as a collateral security for such advancements; that the U.M.W. worked hand in hand with this company and other large companies to drive small operators out of business.

It is claimed that the Union and the large coal operators knew that the small operators could not pay the wages and royalties stipulated in the wage agreement of 1950 and amended from time to time during the material period involved in this lawsuit.

The question for decision by this Court is whether there is any evidence to support the verdict of the jury that U.M.W. combined with business groups to restrain trade and monopolize the coal industry in interstate commerce. The principle is so well established as not to require citation of authority that it is a violation of the law for a union to combine with employer groups to suppress competition or to monopolize an interstate industry. *Allen Bradley Co. v. Local 3, Electrical Workers*, 325 U.S. 797 (a case which has been referred to often today in the course of argument); *Carpenters v. U. S.*, 330 U.S. 395.

There is some proof in the record that Union representatives and large coal operator representatives discussed stabilization of prices at one time or another during the critical periods referred to in the cross-claim.

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In passing upon a motion of this character, the Court is required to follow certain rules, some of which will be mentioned.

First, a conspiracy may be inferred from things done by the alleged conspirators. *Loew's, Inc. v. Cinema Amusements, Inc.*, 210 F. 2d 86, 93.

The Supreme Court, in discussing the subject of conspiracy, has stated:

"A conspiracy is to be viewed by the Court as a whole; the integral parts thereof are not to be weeded out and inquired into separately." *U. S. v. Patten*, 226 U.S. 525 (This case has also been referred to by counsel during the argument today.)

Second, it is the duty of the Court to take the view of the evidence most favorable to Phillips Brothers and to sustain the verdict if there is substantial evidence to support it. *Lavender v. Kurn*, 327 U.S. 645; *Magnolia Petroleum Co. v. Howard*, (C. A. 10), 193 F. 2d 269.

It is rare for a conspiracy to be established by direct evidence. *Eastern State Retail Lumber Dealers Assn. v. U.S.*, 234 U.S. 600.

Conspiracies are ordinarily proved by circumstances. *Loew's, Inc. v. Cinema Amusements, Inc.*, supra, 93.

Third, damages may not be recovered in a conspiracy case unless they are shown with reasonable certainty to have resulted from the wrongs of the conspirators but the injured party will not be deprived of damages because of uncertainty as to the amount. *Story Parchment Co. v. Patterson Paper Co.*, 282 U.S. 555.

Fourth: The question of the amount of damages is for the jury provided the injured party has established by the preponderance of the proof with reasonable certainty that

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he has sustained damages as a direct and proximate result of the wrongful acts of the alleged conspirators.

“... raising, depressing, fixing, pegging or stabilizing the price of a commodity in interstate or foreign commerce is illegal per se.” *U. S. v. Socony-Vacuum Oil Co.*, 310 U.S. 150.

Fifth: It is not necessary to find specific intent to restrain trade or to build a monopoly in order to find that the anti-trust laws have been violated. It is sufficient that a restraint of trade or monopoly results as a consequence of the wrongs of the alleged conspirators. *U. S. v. Patten*, *supra*, 543; *U. S. v. Masonite*, 316 U.S. 265, 275.

Our Sixth Circuit has stated that the trial judge does not sit as a 13th juror as does the trial judge in the state courts of Tennessee. In discussing this subject, the Court quoted from the case of *Tennant v. Peoria & P.U. Ry. Co.*, 321 U.S. 29, 35, as follows:

“Courts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable.”

Then follows the statement that,

“It would be a usurpation of judicial authority, in the absence of any showing of bias, prejudice, passion, corruption or caprice upon the part of the jury where there is in the record substantial evidence to support the amount awarded by a jury as damages to the plaintiff, should the trial judge presume to set aside the verdict, or to reduce it, merely because the judge himself would not have awarded so large an amount had the case been tried to him without a jury.” *Werthan Bag Corp. v. Agnew*, 202 F. 2d 119. See *Spero-Nelson v. Brown*, (C.A. 6), 175 F. 2d 86.

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Counsel for Phillips Brothers have reviewed the evidence in their briefs in detail and have undertaken to point out various parts of the evidence which they claim support their theory that a conspiracy was shown.

Counsel for U.M.W. have likewise reviewed the evidence in detail and have pointed out certain portions of the evidence which they claim sustain their contention that the evidence is insufficient to support the charge of conspiracy.

The Court has given careful consideration to these briefs. As stated at the outset of the hearing, the briefs cover some 366 pages. At this point the Court will digress from the main subject to state that although the jury verdict was returned on May 19, 1961, and the last brief was not filed until July 28, 1961, and the case was not set for argument until today, namely, July 31, 1961, the Court had a purpose in not pushing or prodding the attorneys in the early filing of their briefs. The Court granted numerous extensions of time in which to file the briefs. The purpose was to give counsel plenty of time to prepare thorough briefs, as the Court recognizes that the case presents complex issues of fact and of law.

As previously indicated, the briefs have been given careful consideration. We have heard extended oral arguments and from the record as a whole, the Court is of the opinion, and finds, that there is substantial evidence to support the verdict of the jury in the cross-claim against the U.M.W. and, therefore, overrules the motion of U.M.W. for a judgment notwithstanding the verdict of the jury.

Only brief mention will be made of the U.M.W.'s motion for a new trial because what the Court has previously said is sufficient to dispose of a number of the grounds urged in support of the motion for a new trial.

The first six grounds of this motion again raise the question of the sufficiency of the evidence. Nothing further need be said concerning this question.

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Grounds 7 through 61, inclusive, complain of the rulings of the Court on various questions of evidence. It is the opinion of the Court that it did not commit prejudicial error against the U.M.W. in its rulings on the objections to certain portions of the evidence. We do not believe that it is either proper or necessary at this time to take up separately the various rulings and repeat the reasons given by the Court for its action during the course of the trial. These rulings have been thoroughly discussed by the parties in their briefs and they were thoroughly discussed during the trial.

Ground No. 62 complains of the action of the Court in failing to submit to the jury U.M.W.'s Requests No. 37, 49, 50, 53, 53A, 58 and 63. The Court believes that it charged revised Request No. 53A verbatim. The court further believes that it gave Requests No. 50 and 53 as supplements to its original charge.

The other charges, Nos. 37 through 63, were charged in substance, except Request No. 58, and as to that request the Court was of the opinion, and is now of the opinion, that it would not have been proper to charge that request.

The Court is of the opinion that Ground No. 63 is without merit and is therefore overruled.

Ground No. 64 is general and does not require a discussion.

Grounds No. 65 and 66 also complain of certain portions of the charge. It is the opinion of the Court that these grounds are without merit and are, therefore, overruled.

Ground No. 67 asserts that the Court erred in permitting the consolidation for trial of the Trustee's action against Phillips Brothers with the cross-action of Phillips Brothers against U.M.W. It is claimed that U.M.W. was improperly joined in the action under Rule 13(h) of the Federal Rules of Civil Procedure. That the original answer raised the defense of the contract being made pursuant to

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a conspiracy in violation of the anti-trust laws. That a counterclaim was filed against the Trustees and a cross-claim was filed against the U.M.W. That the Court granted the motion for an order under Rule 13(h) to bring the U.M.W. into the case as a cross-defendant. That service was had upon U.M.W. and the Trustees moved to quash the service of process. That amendments and motions to amend the answer, the cross-claim and counterclaim were filed in which the conspiracy was described and set up as a defense to the original claim of the Trustees. That it was also the basis of the counterclaim against the Trustees and the basis of the cross-claim against the U.M.W. That under these circumstances the Court had no right to allow the case to be continued against U.M.W. after the claim for affirmative relief against the Trustees had been withdrawn. Rule 15(c) of the Federal Rules of Civil Procedure relates amendments back to the date of the original pleading. The motion to quash the service of process was denied.

It is the opinion of this Court that inasmuch as the cross-claim charged U.M.W. with being a co-conspirator in the same conspiracy raised as a matter of defense against the Trustees' claim, the Union was properly brought into the case under Rule 13(h). *Lesnik v. Public Industrials Corp.*, 144 F. 2d 968.

Where there is service of process and where federal jurisdiction is present, the Court may try the ancillary claim regardless of the disposition made of the original claim. *Pierce v. Perlite Aggregates*, 110 F. Supp. 684; *Switzer Bros., Inc. v. Chicago Card Board Co.*, 252 F. 2d 407. See *Emmerich v. May*, 130 F. Supp. 426; *U. S. v. Milhan*, 15 F.R.D. 459.

Rule 13 contemplates bringing in third parties where the subject matter raised is to qualify or defeat the original claim of the plaintiff against the original defendant. The purpose of the rule is to avoid circuitry of action and to dis-

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pose of the entire matter at one time. *Blair v. Cleveland Twist Drill Co.*, 197 F. 2d 842.

Rule 20(a) provides:

"All persons may be joined in one action as defendants if there is asserted against them jointly, severally or in the alternative, any right to relief in respect thereof or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action."

Rule 21 provides:

"Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just."

The purpose of these rules is to require that all disputes relating to the same subject matter be settled in one lawsuit.

As previously indicated, it is the contention of U.M.W. that the dismissal of the counterclaim brought about a dismissal of the cross-claim. This contention seems to run counter to Rule 20(a), which is as follows:

"A plaintiff or defendant need not be interested in obtaining or defending against all of the relief demanded. Judgment may be given for one or more of the plaintiffs, according to their respective rights to relief and against one or more defendants according to their respective liabilities."

Rule 54(b) provides:

"When more than one claim for relief is presented in an action, whether as a claim, or counterclaim, cross-claim, or third-party claim, the Court may direct the entry of a final judgment upon one or more but less than all of the claims only upon an express determina-

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tion that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated which adjudicates less than all of the claims shall not terminate the action as to any of the claims, and the order or other form of decision is subject to revision at any time before the entry of the judgment adjudicating all of the claims."

Aside from the aforementioned rule, it is the opinion of the Court that it had the right to treat the cross-claim against the U.M.W. as an original suit. The question of conspiracy was involved in both of the suits. That is, the question was involved in the defense to the claim of the Trustees and it was involved in the claim of Phillips Brothers against U.M.W. It does not seem feasible to this Court to have a five weeks trial in the U.M.W. phase of the case and also a five weeks trial on the Trustees phase of the case when the matter of conspiracy could just as well have been settled in one trial.

Ground No. 68 asserts that there is no material evidence that U.M.W. conspired with each of the coal companies which are alleged to be co-conspirators, and the Court erred in failing to sustain U.M.W.'s motion for a partial directed verdict as to each of the alleged co-conspirators.

It is to be observed that it was not necessary for the proof to show that U.M.W. conspired with all of the coal companies named in the complaint in order for Phillips Brothers to establish a cause of action but only one or more of them. This ground of the motion, in the opinion of the Court, is also without merit.

Mention should be made at this time of the claim of U.M.W. that the Court erred in admitting evidence bearing on the question of conspiracy before the damage period and subsequent to the damage period. Specific mention

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should be made of this question because of the repeated insistence of U.M.W. that the Court committed prejudicial error in admitting this character of testimony. The jury was told that such evidence was admitted for whatever bearing, if any, it had on the alleged conspiracy but that it was not admitted as bearing on the question of damages and the jury should not consider it on the question of damages.

It is the opinion of the Court that since a general conspiracy was charged such evidence was clearly competent as bearing on the question of whether a conspiracy existed during the crucial period. *Buckeye Powder Co. v. Hazard Powder Co.*, 205 F. 827, 830; *Hillside Amusement Co. v. Warner Bros. Pictures*, 7 F.R.D. 260; *Wellman v. U. S.*, (C.A. 6), 227 F. 2d 757; *Federal Trade Commission v. Cement Institute*, 333 U.S. 683.

For the reasons indicated, the Court is of the opinion and holds that the motion of U.M.W. for a judgment notwithstanding the verdict of the jury and the alternative motion of U.M.W. for a new trial, and all of the grounds urged in support of these motions, are without merit and are therefore overruled.

This brings us to the Trustees' motion to set aside the verdict of the jury and to enter judgment in their favor for \$55,982.62 with interest. The motion is based upon the proposition that the evidence is insufficient in law to sustain the verdict of the jury that the Trustees engaged in the conspiracy charged in the counterclaim.

The overt acts charged against the Trustees are:

(a) The Trustees paid benefits only to members of U.M.W.

(b) The Trustees required the beneficiaries of the trust to picket or perform other acts for the U.M.W. in order to obtain or retain pension benefits, or acquiesced in the doing of these things by the beneficiaries.

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(c) The Trustees, as a punitive measure, brought legal actions to recover royalties on coal produced.

(d) The Trustees held out to the men in the industry that the Fund was under Union control.

(e) The Fund, in fact, was under the domination and control of the U.M.W.

The Court charged the jury that these acts standing alone were not sufficient to establish that the Trustees were co-conspirators.

The Court further charged the jury that the acts of individuals, unless the Trustees actually authorized the unlawful acts, if any, or ratified such acts, if any, after actual knowledge thereof, would not bind the Trustees so as to make them parties to the alleged conspiracy.

The Court further charged that the Trustees, in their official capacity, had no legal right to require or not to require the beneficiaries of the Fund to picket on behalf of U.M.W. in labor matters; that the Trustees were legally obligated to collect all monies due the Fund and to use reasonable means to make such collection, including the bringing of suits; that the Fund "was created by a trust instrument contained in the National Bituminous Coal Wage Agreement of 1950 pursuant to Section 302 of the Taft-Hartley Act, and the wording of the trust agreement was in accordance with the requirements of the Taft-Hartley Act. The trust instrument provides for payment of benefits to employees of signatory operators. . ."

Action of a majority of the Trustees is required to bind the Fund. See *Van Horn v. Lewis*, 79 F. Supp. 541.

In the opinion of the Court there is no substantial evidence to support the verdict of the jury that a majority of the Trustees participated in the alleged conspiracy. There is no evidence that either Miss Josephine Roche or Mr. Henry G. Schmidt or Mr. Charles A. Owen, now de-

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ceased, (those parties being the only parties, except Mr. John L. Lewis, who served the trust fund after 1950), had any dealings with large coal operators from which it could be inferred that they agreed, combined, or conspired to stabilize coal prices in the bituminous coal industry in interstate commerce.

The actions of Mr. Lewis alone without authorization or consent of a majority of the Trustees would not be sufficient, in the opinion of the Court, to bind the Fund or to show that the Trustees conspired with the large coal operators to drive a small operator out of business. If it had been shown that Mr. Lewis controlled the actions of the other Trustees at the time this alleged conspiracy was formed, this might present a different question.

In the opinion of the Court there is no evidence to support the verdict of the jury that Mr. Lewis, for himself and another of the Trustees, entered into the conspiracy so as to bind the Trustees either individually or in their capacity as trustees or to bind the Trust Fund.

The charge that the Trustees were conspirators seems to have been directed at Mr. Lewis. This can very well be understood inasmuch as Mr. Lewis served in a dual capacity. He was president of the U.M.W. during the material period and also chairman of the Fund during this period.

Counsel for Phillips Brothers pointed out in their brief that Mr. Lewis made certain statements in his testimony given on discovery to the effect that the U.M.W. and some of the large coal operators decided to stabilize prices, but some of his testimony during the trial was not entirely consistent with that testimony. If there is a sound basis for such contention, we do not believe that this is sufficient to sustain the verdict of the jury that the Trustees participated in the conspiracy.

The evidence is reasonably clear that Union membership was not a prerequisite for obtaining benefits from the Fund

Opinion Rendered from Bench

after 1950. In that connection, it must be recalled that in 1951 the Trustees published a brochure setting forth in detail the requirements of pension benefits, not one of which was Union membership. Trustees Roche, Schmidt and Lewis each testified that benefits from the Fund have been paid to non-Union members as well as to Union members. Such was also the testimony of counsel Mitch.

The evidence is insufficient to show that the Trustees instituted suits for the purpose of eliminating small operators. Trustees Roche and Schmidt testified that the matter of institution of suits was left in the hands of counsel Mitch for the most part.

The evidence is insufficient to show that the Trustees required pensioners to picket for the U.M.W. in order to obtain or retain benefits of the Fund.

The evidence is insufficient to show that the Trustees held out to industry employees that the Fund was under Union control. The Trustees testified positively that the Union did not dominate or control the Fund. The evidence is insufficient to show the contrary.

It is true that there are some suspicious circumstances in the record not only as to these matters but also as to other charges against the Trustees. However, a juror's verdict cannot be based upon suspicion alone. *N.L.R.B. v. Sun Shipbuilding & Dry D. Co.*, (C.A. 3), 135 F. 2d 15, 31.

Substantial evidence means more than merely the suspicion of the existence of a fact. *Hazel-Atlas Glass Co. v. N.L.R.B.*, (C.A. 4), 127 F. 2d 109, 117.

Having found that there is no substantial evidence to support the verdict of the jury that the Trustees engaged in the conspiracy as charged by Phillips Brothers, it follows as a matter of contract that the Trustees are entitled to recover unpaid royalties due them under the contract signed by Phillips Brothers, but the Trustees are not entitled to

Opinion Rendered from Bench

recover the royalties that accrued before a majority of the employees of Phillips Brothers became members of the Union. At the time Phillips Brothers signed the National Bituminous Coal Wage Agreement of 1950, the U.M.W. did not represent a majority of their employees and therefore was not the bargaining agent for the employees. We think that a fair interpretation of the record shows that a majority of the employees of Phillips Brothers joined the Union on April 25, 1955. The Trustees, therefore, are entitled to recover unpaid royalties that accrued after that date. The Court bases this conclusion on the principles announced in the case of *International Ladies Garment Workers' Union, AFL-CIO v. N.L.R.B. and Bernhard-Altmann Texas Corporation*; U. S. Supreme Court, June 5, 1961.

In view of the foregoing conclusions, it is not necessary for the Court to determine the question of whether the Trustees would be deprived of recovery if there had been evidence to support the verdict of the jury that the Trustees joined in the conspiracy, as charged by Phillips Brothers.

• • • • •

The record in this case shows that Mr. Jerome Taylor, associate of Mr. Templeton, performed ten hours of work; Mr. Harley G. Fowler, a partner of Mr. Rowntree, 200 hours; Mr. Templeton 370 hours; Mr. Robertson 1,189 hours, and Mr. Rowntree, 2,792 hours, making a total of 4,461 hours. A part of this work was necessarily performed in the defense of the claim of the Trustees against Phillips Brothers.

• • • • •

100a

Notice of Appeal

Filed August 28, 1961

Notice of Appeal

Notice is hereby given that the United Mine Workers of America, the cross defendant in the above styled case, hereby appeals to the United States Court of Appeals for Sixth Circuit from the final judgment entered in this action on August 2, 1961.

Notice of Appeal; Order, August 28, 1961

Filed August 28, 1961

Notice of Appeal to Court of Appeals for the Sixth Circuit

Notice is hereby given that the defendants, James M. Pennington, Raymond E. Phillips and Lillian Goad Phillips, Administratrix of the Estate of Burse Phillips, Deceased, jointly and severally hereby appeal to the United States Court of Appeals for the Sixth Circuit from that portion of the Final Judgment entered in this action on August 2nd 1961, which sustains in part the motion of the plaintiffs, John L. Lewis, Josephine Roche and Henry G. Schmidt, Trustees of the United Mine Workers of America Welfare and Retirement Fund for judgment notwithstanding the verdict.

Filed August 28, 1961

Order

Come the parties by their attorneys and make known that James M. Pennington, Raymond E. Phillips and Lillian Goad Phillips, Administratrix of the Estate of Burse Phillips, deceased, the cross-plaintiffs in this case, have agreed that cross-defendant, United Mine Workers of America, shall not be required to post a supersedeas bond in connection with its appeal in the above styled case.

IT IS, THEREFORE, ORDERED pursuant to the agreement of the parties that execution shall not issue upon the judgment entered against the cross-defendant, United Mine Workers of America, in the above styled case during the pendency of its appeal to the United States Court of Appeals for the Sixth Circuit and during any period allowed for petitioning for certiorari before the Supreme Court of the United States and while review of the case is pending in the Supreme Court of the United States.

Order, October 2, 1961

Entered October 2, 1961

**Order Extending Time for Filing Record on Appeal and
Docketing Appeals in the Court of Appeals for the Sixth Circuit**

By agreement of counsel for plaintiffs, John L. Lewis, Josephine Roche, and Henry G. Schmidt, Trustees of the United Mine Workers of America Welfare and Retirement Fund, the defendants and cross-plaintiffs, James M. Pennington, Raymond E. Phillips and Lillian Goad Phillips, Administratrix of the Estate of Burse Phillips, deceased, and the cross-defendant, United Mine Workers of America, it is ordered that the time for filing the record on appeal and docketing the appeals in the Court of Appeals for the Sixth Circuit is extended to a date ninety (90) days from the date of the filing of the first notice of appeal, which was filed on August 28, 1961.

Caption in District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

CIVIL ACTION No. 3431

JOHN L. LEWIS and JOSEPHINE ROCHE, as TRUSTEES of the
UNITED MINE WORKERS OF AMERICA WELFARE AND RE-
TIREMENT FUND,

HENRY G. SCHMIDT, Trustee (amended 8-11-58), *Plaintiffs,*

vs.

JAMES M. PENNINGTON, RALPH E. PHILLIPS and *BRUCE
PHILLIPS, Individually and trading as PHILLIPS
BROTHERS COAL COMPANY, A Partnership,**

*LILLIAN GOAD PHILLIPS, Admrx. as defendant and cross
plaintiff in the place and stead of Bruce Phillips (sub-
stituted 9-30-60) *Defendants,*

vs.

UNITED MINE WORKERS OF AMERICA, *Cross Defendant.*

**The name of "Ralph E. Phillips" was corrected to "Raymond E. Phillips" on January 16, 1961.

Transcript of Proceedings

* * * * *

1 The Court: Ladies and gentlemen, the original com-
2 plaint in this case was filed by John L. Lewis, Henry
 G. Schmidt and Mrs. Josephine Roche as Trustees
 of the United Mine Workers of America Welfare
 and Retirement Fund against James M. Pennington, Ralph
 E. Phillips and Bruce Phillips, individually and trading as
 Phillips Brothers Coal Company, to collect the sum of
 \$55,982.62 alleged to have been due pursuant to the terms
 of a trust provision contained in a collective bargaining
 agreement which existed between the United Mine Workers
 of America and the defendant Phillips Brothers, being al-
 leged royalty payments due said plaintiffs under said
 agreement.

* * * * *

As I say, the sole defense of this defendant to this claim
for these royalties is that these trustees participated in
an alleged conspiracy between the United Mine Workers
of America and certain coal companies, whose names will
be mentioned during the course of this trial.

3 Now the sole issue for this jury to decide insofar
 as the claim of the trustees is concerned, is whether
 these trustees participated in this alleged conspiracy.

If you find that the trustees did not participate in the
conspiracy, you will say so. If you find that they did par-

Court's Statement of Case

ticipate in this alleged conspiracy, you will say so. From that point on, the Court will decide the remaining questions that are involved in that phase of the case.

Now by cross-claim, this partnership brought in the United Mine Workers of America. They will be referred to probably in the course of this trial as the international union, and in the cross-claim cross-plaintiffs charge that the union violated sections 1 and 2 of the Sherman Anti-trust Law in that the union conspired with a number of large coal companies, whose names will be mentioned hereafter, to restrain interstate commerce in the bituminous coal industry and in so doing they violated Section 1 of the Sherman Anti-trust law.

Cross-plaintiff further charges that the union conspired with a number of these large coal companies to violate Section 2 of the Sherman Anti-trust law which prohibits monopolies or prohibits an attempt to monopolize.

4 Cross-plaintiffs say that this union and these large coal companies, one or more of them, monopolized or attempted to monopolize the bituminous coal industry.

Cross-plaintiffs say that it was damaged as a direct and proximate result of that conspiracy in that it was driven out of business. And in that connection, cross-complainant says that one of the purposes of this conspiracy between the union and these large coal companies was to raise the wages very high and to raise the royalty on this coal very high, so that only the large coal companies which used the modern tools or mechanics in the getting out of coal and the processing of coal could pay these royalties; that the union and these large coal companies knew that these little companies, of which Phillips Brothers Coal Company was one, could not pay the standard of wages which they fixed and these high royalties on the coal that was produced.

Now for defense to those claims of cross-plaintiff Phillips Brothers Coal Company, the union states that it did

Court's Statement of Case

not conspire with the large coal companies or anyone else to violate either Section 1 or Section 2 of the Sherman Anti-trust Act or any other provision of the anti-trust law.

5 The union says further that it did no wrong, that it did not commit any wrongful act against cross-plaintiff or against any other coal operator, either large or small; that under a certain provision—I believe it is Section 15 of the Clayton Act, which is a part of the anti-trust law—the union says that it as a union, as well as all other unions, is exempt from the anti-trust laws. And that every-
6 thing it did in the negotiations of these coal companies, including plaintiff, was done to further the objective of the union and its members, namely to improve the working conditions, the members of the union, to raise the wages of the union, and that none of the objectives which the union had in mind violated any of the anti-trust laws.

I might say to you at this time that the main issues for you to decide in this case, first insofar as the trustees' claim is concerned, are whether or not these trustees, namely Mr. Lewis, Mr. Schmidt and Mrs. Roche or Roche—you will hear these names.

Mr. Kramer: Roche.

The Court: She is a lady out here in Denver, Colorado. Roche is her name, and she is one of the trustees of this trust fund, this welfare fund. I say whether these trustees participated in this alleged conspiracy. Now in that connection, of course, you will have to decide, first,
7 whether there was any conspiracy. Second, if there was a conspiracy, whether the trustees participated in it.

Now when you do that, you will have performed your duties insofar as the claim of the trustees is concerned.

The issues under the cross-claim are substantially as follows. First, did the union with one or more of the coal

Court's Statement of the Case

companies, and their names will be furnished to you before this case ends, conspire between themselves and with others to violate either Section 1 or Section 2 of the Sherman Anti-Trust Law. That is to say, did they conspire to restrain interstate commerce in the bituminous coal industry, unreasonably restrain interstate commerce in the bituminous coal industry. Second, did they conspire with one or more alleged conspirators to monopolize or attempt to monopolize the bituminous coal industry in violation of Section 2 of the Sherman Anti-Trust Law.

This suit, this cross-claim was filed on February 14, 1954. Under the anti-trust laws, anything that occurred more than four years prior to the suit was filed is barred by the statute of limitations, so the alleged damage period involved in this suit is from February 14, 1954 until February 14, 1958 under the anti-trust four year limitation act. But by agreement of the parties in this case, since the Phillips Coal people went out of business on December 31, 1958, the damage period begins on February 14, 1954 and ends December 31, 1958, or the date that Phillips Brothers Coal Company went out of business.

Those are the main problems which the jury that sits on this case will have to decide.

112 The Court: Members of the jury, counsel for each side expect at this time or shortly to state to you their respective contentions:

125 Mr. Rowntree: May it please the Court, ladies and gentlemen of the jury,

127 I think you will see from the proof that it will be our purpose to show to you that something is wrong

Defendants' Opening Statement

in our coal industry. It is our position that the thing that has caused the predicament of our coal industry is this conspiracy—a conspiracy entered into between the United Mine Workers of America, these Trustees who have sued us, and certain large coal companies in the country.

* * * * *

128 We are talking here about the facility of these two groups getting together—the union officers finding an easy way to perpetrate, to perpetuate their union power and their own international jobs.

We are not talking about the ordinary member of the union. The proof will show that during the course of this conspiracy two-thirds of the members of this union have been forced out of the industry.

* * * * *

But it is necessary in order for you to follow many of the questions in the proof in this case—it is necessary for you to hear our position with respect to certain rules that are contained under the National Labor law. For we

129 charge here that this conspiracy was carried on by certain attempts to evade the federal labor law.

* * * * *

In other words, this right of choice that is given to employees is a fundamental right as protected by law and can't be inter-meddled with or interfered with by

130 coercion, restraint, on the part of the union or by encourage or discouragement on the part of an employer.

We say that there is one exception to that where the employer and the union duly authorized by the employees as the collective bargaining agent, put into their contract a union shop clause.

A union shop clause provides that the employees may be required to join a union within 30 days of their employment, but that union shop clause has certain restrictions in it.

Defendants' Opening Statement

Before 1951 the employees had to vote whether or not there would be a union shop clause before that union shop clause would be effective. That was before 1951.

After 1951, the federal law says that it is no longer necessary for the employees to vote but a union who has or who wants an effective union shop clause in its contracts must be in compliance with the reporting provisions of the labor law.

These reports that the union is supposed to file are reports about its financing, its organization, its elections, and it must also file a report with respect to or on the subject of connection with communism by its elected officers—the officers of the union must file an anti-communist oath.

133 I would like to give you the background of this conspiracy that we charge, and most of this material will be taken from the deposition of Mr. John L. Lewis, certain union records and trustee records, the deposition of Judge Charles I. Dawson, and the deposition of Mr. George H. Love, the board chairman of Consolidation Coal Company.

We charge that the companies involved in this conspiracy, these national companies, are Consolidation Coal Company, Peabody Coal Company, West Kentucky Coal Company, Nashville Coal Company, Island Creek Coal Company, The Pittston Company, the Pittsburgh Midway Coal Company—those are the companies that we say were the big national combines who engaged with the union in this conspiracy.

You realize that in World War II and the immediate postwar years the productive capacity of the country grew tremendously, and in the year '48 and '49 a crisis was confronted by the industry, arising from overproduction for the markets that were then able to absorb the coal.

134 Before 1950 the major coal companies and the union were pretty much in agreement that this was

Defendants' Opening Statement

the principal problem confronting the country and that it was added to by the growth of these small coal companies that grew up during the war and the immediate postwar period; that the overproduction was being contributed to by these small companies, and that was a problem.

Both the union and the major coal companies recognized that problem, but they were in disagreement on how to handle that problem.

The union in this period of '48 and '49 was taking the position that the problem should be met by reducing the working time of all coal companies, big and little alike, and that was their effort at that time. They sought to dictate the working time of the men in the industry throughout the whole industry.

This involved their effort to dominate the men of the industry. They sought to evade these labor laws I have been talking about. They sought to impose union shop or even closed shop contracts. They sought to direct and take over the Welfare Fund we have heard about. They sought to control it.

The major coal companies at that time, '48 and '49, did not like this idea. The union was setting three day work weeks and no day work weeks, and seeking to dictate
135 the economics of the industry. The major coal companies attacked these efforts in the courts and defeated the union on several cases with respect to these labor laws, the union shop and their control over the Welfare Fund.

Then we had the struggle over the 1950 contract. We say that this was the point where this conspiracy was formed. This period is important, the year 1950, because we say that is when this conspiracy was organized.

In 1950 we will see from the proof a tremendous difference in the relation of these major coal companies with the union as compared to the period after 1950. In 1950, it

Defendants' Opening Statement

is our contention that there was an agreement between the union and the major coal companies as will be shown clearly, we believe, from the proof, at that time by the express declaration of the representatives of the major coal companies, they obtained from the union the right to dictate their own working time. From that point on, the major coal companies have had the privilege of dictating their own working time and at that point there was a surrender by the union of its previous effort to dictate the working time in the industry.

At that time the representatives of the major coal companies declared that they were turning this Welfare
136 Fund over to the union.

It is our position that that was strictly contrary to the Taft-Hartley Act and the National Labor Relations Act, that that was an indication of the agreement between parties that the conspiracy could be furthered by continuing the union's domination over the men of the industry, rather than the major coal companies opposing that as they had in the past. We will see a great difference in their relation in that respect from 1950 on.

We maintain that the union shop clause was contained in the act and we think it was under circumstances that violated the federal labor laws, as the proof will show, and that the union's control over the Welfare Fund continued after 1950.

We say that a principal agreement that was made in 1950, was the agreement that this national labor act—I mean contract, the National Bituminous Coal Wage Agreement would be imposed upon the small mines of the country and that it was necessary to evade the labor statutes in order to do that.

This national contract is a uniform thing. It applies to everybody alike, regardless of ability to pay, regardless of mining conditions in the individual mine, regardless of

Defendants' Opening Statement

the degree of mechanization in the individual mine.

137 We say that there was an agreement that these terms in this contract would be increased tremendously in succeeding amendments to the contract until it reached proportions far beyond the abilities of the small companies to pay.

This contract was amended frequently by increasing the wage scale and the royalty for coal under the Welfare and these increases put it out of reach of the small companies, so it became necessary to have an agreement on how this contract could be imposed upon the small companies which would be beyond their reach when it was understood when the law contemplated that the employees of the small companies had the right of choice with respect to their affiliation with a union or their selection of a union as a bargaining agent.

If the employees had the choice, we think it is obvious that the employees would not force terms on their employer that would put them out of business. We think it is obvious that an employee would want to hold his job rather than going into unemployment.

So that is why we get into this area of the evasion of the Taft-Hartley Act or the National Labor Relations Act.

138 The means of forcing the contract upon the small coal companies will be a subject of this case. Mobs and terrorism were used. There will be some proof in this case on that. We will hold it to a minimum. We can't put it all in, but we will put that which pertained to this coal company in.

The trustees of the Welfare Fund stood by as pensioners under the fund were organized into bands which has as their purpose the imposition of the contract upon the small companies of the various areas.

Paying of the Welfare Fund benefits to men in the industry depended upon the retention of membership in good standing in the union, certified to by the local, district and international union officers.

Defendants' Opening Statement

It is our contention that the labor law says, just as counsel pointed out, that the fund will be run equally by an employer representative and employee representative. They may have a neutral trustee to help in case of dispute between the two. But we think it is obvious that if the fund is run exclusively by an union or run exclusively for union members, that that is a term or condition which would encourage union membership and which would violate the labor law. We think in this case the nature of the management of the fund will be clear and that the union's control will be obvious.

139 This fund was held out to the members of the union and to the employees in the industry as a union controlled fund.

We think we will encounter denials by the union and the trustees that the union does run this fund, but I want you to watch the proof and see what the proof shows.

The finances of the union and the finances of the major coal companies were used in large amounts to bring the contract to bear upon all the production in the country. There will be proof with respect to the use of union financing in this regard in many millions of dollars.

One or more of the major coal companies have assisted in crushing the opposition of the principal union competitor of the United Mine Workers in the coal fields. There will be some proof with respect to cooperation between Peabody Coal Company and the union in knocking out the little progressive mine workers and some important mines. The proof will consider as briefly as possible that incident.

The result of this conspiracy and these activities over the country has been the large number of small companies that have been forced out of the industry and their employees have been forced out of the industry.

140 In fact, we think the industry has been slashed in the number of men in the industry, has been reduced two-thirds during the course of this conspiracy.

In the meantime the major coal companies have mechan-

Defendants' Opening Statement

There will be quite a few records in the case. We will attempt to summarize them as much as possible, but to present this picture as clearly as possible, that the spot coal market was beat down to such an extent that there was no profitable market left here in the Tennessee Valley, and we say that our clients were severely injured by this, because this was our market, the market that we sold coal to, that that is the cause of our losses in '57 and '58 which run us out of business.

Now with respect to this contract that the trustees have sued us on. I want to deal specifically with that. That is one of these National Bituminous Coal Wage Agreements that I have been talking about where the increases occurred, where the purpose was and the knowledge was that these small companies could not possibly pay under this contract, and as I have said, there are some forty-one of these small companies sued in Tennessee at the present time.

145 This contract, we say, was forced upon this company. (Did the union go to the employees to obtain their membership or authority to represent them in dealing with this employer, our client? No. We think the proof will show that the contract was extracted from the company, that the union had no authority from any employee, from certainly not the majority. We think the proof will show that the employees were not even members of the union; that they didn't even know about the contract, and I recall to your mind what we say the labor law is, that the employees have the right of choice, that they obviously are not going to impose a contract upon the employer that clearly would force him out of business, and we say that after the contract was signed, it was several months after that that a mob came and forced the employees to join this union.

I think that the proof will be certainly clear as to the union's participation in that, and it was only under those circumstances that the union obtained any right to represent these employees.

Stipulation

171 Mr. Kramer: May it please the Court, on behalf of the trustees, at this time I want to introduce a stipulation.

The Court: All right, sir.

Mr. Kramer: After the style of the case, this stipulation is introduced as if it was the sworn evidence and has the same effect as His Honor will tell you.

The Court: That's right.

Mr. Kramer: The following matters are stipulated between the parties to this action:

First, the defendants executed collective bargaining agreements with the United Mine Workers of America on October 1, 1953; September 6, 1955; and October 22, 1956; which agreements provided that the defendants were to pay a royalty of forty cents per ton on each ton of coal produced for sale.

Second, the defendants produced the following monthly tonnages of coal from October 1, 1953, to, and including December 31, 1958, period, being subject to the forty cents per ton royalty.

It begins with October, 1953, 3,093.29; November, 1953, 2,995.42; December, 1953, 1,930.25.

172 For the year, 1953, after signing the contract, total, 8,018.96.

In the year, 1954, in January 2,133.45; in February, 405.19; in March 440.31; in April 181.70; in May 1,533.15; in June 3,465.40; in July 1,763.70; in August 2,525.67; in September 1,699.07; in October 5,010.00; in November 3,442.41; in December 2,885.48; making a total for 1954, that calendar year, 25,485.86.

For the year 1955, in January 1,688.50; in February 468.37; in March 724.47; in April 579.07; in May 3,854.86; in June 5,035.60; in July 3,868.81; in August 5,325.33; in September 3,923.90; in October 3,988.73; in November 3,310.64; in December 1,152.51; which makes a total for the year 1955 of 33,920.79.

Testimony of Jack Shattuck

1956, in January 700.81; in February 359.71; in March 838.87; in April 1,542.54; in May 1,976.02; in June 2,963.88; in July 2,639.63; in August 2,530.22; in September 3,180.13; in October 2,385.05; in November 2,949.91; and in December 1,296.55; making a total for calendar year 1956, 23,363.32.

In 1957, January 577.62; February 63.78; in March 1,106.90; in April 448.66; in May 3,327.69; in June 2,282.91; in July 1,718.02; in August 4,782.68; in September 2,249.58; in October 2,587.50; in November 2,101.31; and in December 1,410.32; making a total for the year 1957 of 173 22,656.97 tons.

For the year 1958, in January 1,230.05; February 162.90; in March 1,243.73; in April 1,845.25; in May 1,768.61; in June 2,893.34; in July 2,931.86; in August 4,718.16; in September 5,092.16; in October 3,466.76; in November 4,094.36; in December 2,632.71; which makes a total for the calendar year 1958 of 32,079.89 tons.

Three, defendants made the following payments pursuant to the collective bargaining agreements:

On November the 12, 1953, \$321.17; in December, 1953, \$193.02; on July 30, 1955, \$312.16; December 17, 1955, \$769.63; and August 4, 1956, \$631.72; for a total during the period of \$2,227.70.

Four, the amount of royalty which was not paid on the total production of 145,525.79 tons is in the amount of \$55,982.62.

Five, this stipulation may be read in evidence upon the trial of this case, and it is signed by counsel.

The stipulation makes reference to the contracts, Your Honor, recites that this was under the term of the contract.

We ask that the stipulation be filed as a part of the record in this case, and with that plaintiff trustees
174 rest.

JACK SHATTUCK

called as a witness by and on behalf of the defendants,

Testimony of Jack Shattuck

after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. Rowntree:

Q. This is Mr. Jack Shattuck. A. Yes, sir.

Q. You have been sworn, Mr. Shattuck? A. Yes, sir.

The Court: How do you spell your last name?

The Witness: S-H-A-T-T-U-C-K.

By Mr. Rowntree:

Q. Where do you live, sir? A. Clinton

Q. Clinton, Tennessee? A. Yes, sir.

Q. In April, 1955, who were you working for? A. Power Equipment Company here in Knoxville.

Q. What was your job? A. Salesman.

Q. What kind of equipment do they sell? A. Earth
175 moving equipment.

Q. What was your area of sales? A. I had Morgan, Scott, Fentress, Cumberland, Campbell, and Claiborne Counties.

Q. Were coal mining companies among your customers? A. Yes, sir, strippers.

Q. Were they a substantial number of your customers? A. Oh, yes, most of my customers were coal operators.

Q. Were you in Jellico, Tennessee, sometime in April of 1955? A. Yes, sir, I was.

Q. Do you recall what part of the month it was? A. No, I don't remember the date.

Q. What did you see there when you were there in Jellico? A. You mean at some—

Q. Something unusual. A. Well, this one morning, I had stayed at the hotel up in Jellico, and there was a terrific mob of people, of men, around the Osborne Tipple which is right in the center of Jellico, just a terrific congregation of men.

Q. Did you stay there in Jellico and watch them? A. No, I went about my business.

Testimony of Jack Shattuck

176 Q. And where did you go? A. Well, I called on several people there in Jellico, and I went from there up to Newcomb.

Q. And who did you see in Newcomb? A. The first ones I saw were Mr. Boots and Mr. Cox who were customers of mine.

Q. Are you familiar with Campbell County, Tennessee? A. I think so, most of it.

Mr. Rowntree: We have here a map from the Tennessee Valley Authority of Campbell County, Tennessee, Your Honor. I will ask the witness—

The Court: You want to use the blackboard?

Mr. Rowntree: Yes, sir, I would like to put it on the board.

177 By Mr. Rowntree:

Q. From a hasty perusal of that, does that appear to be a true representation of a map of Campbell County?

A. That is a map of Campbell County all right. Jacksboro, LaFollette, Jellico, Newcomb.

Mr. Kramer: This is the same map I have seen heretofore?

Mr. Rowntree: Yes, sir.

A. (Continuing) Yes, sir, that is Campbell County for sure.

Mr. Rowntree: I will introduce that as Defendant's Exhibit—shall we number these exhibits serially all the way through?

The Court: Yes, serially.

Mr. Rowntree: As Exhibit No. 1.

(EXHIBIT NO. 1 was filed.)

By Mr. Rowntree:

Q. Mr. Shattuck, will you step down and point out where Newcomb is on this map? A. (Witness complies with request of counsel.) Is that what you want, sir?

Q. Will you mark "Newcomb" with an X there, particularly the place where you saw Mr. Boots and Mr. Cox?

Testimony of Jack Shattuck

A. I will have to put my glasses on. Where they were at?

Q. Right. A. Right there (marking on map).

178 Q. Will you point out on the map Jellico. Just point to it. A. (Witness complies with request of counsel.)

Q. Take the seat, please. A. (Witness returns to witness stand.)

Q. What happened there at the—what kind of operation did Mr. Boots and Mr. Cox have there at Newcomb, or had, at that time? A. They were stripping coal on what is known as the dead lift strip. The strip both on contour strip or dead lift, on a flat, and this happened to be what is known in the business as a dead lift strip. pit.

Q. And what happened there at that pit while you were there? A. Well, I went in there and was talking to Mr. Boots, who was one of the owners, and while I was talking to him this mob busted in there and—

Mr. Kramer: May it please the Court, we want to object to this line of testimony, and I think we ought to, in view of the law as we understand is applicable, have an opportunity to present our objection, and I am sure your Honor is familiar with the testimony he is offering by this witness. at this time, your Honor will recall, and we are
179 going to ask that the jury—if we may present it in the absence of the jury.

The Court: You mean you object to it?

Mr. Kramer: We do, your Honor.

The Court: Well, what is the purpose of this testimony?

Mr. Rowntree: We have explained that our position is that the small coal companies signed the Bituminous Wage Agreement for certain reasons. We are showing a connection between this incident and the enforcement of the union shop clause in their contract. This has a direct relationship to that, sir. And the union insists, apparently, that there was no effective union shop clause.

We are showing the enforcement of the union shop clause by this incident and other incidents in a series here in

Testimony of Jack Shattuck

which our coal company was directly involved, and the terrorism in the coal fields has a strong position in this case under our theory.

Mr. Kramer: We think, your Honor, under the Apex case that your Honor is somewhat familiar with, that this type of proof does not establish anything that would bring it within a violation of the Sherman Act.

180. The Court: Members of the jury, before there can be a violation of the Sherman Act it must appear from the proof under the complaint in this case, which is by way of a cross-action, that, first, there was a conspiracy by the UMW—that is the United Mine Workers—and one or more of these coal companies whose names have been mentioned, and that there was one or more overt acts committed by one or more of the conspirators to carry out the conspiracy; that it must further appear that the conspiracy was to either violate Section 1 of the Sherman Act which provides, in substance, as I have indicated, that parties shall not combine to restrain interstate commerce, or it must appear that the defendant conspired to violate Section 2 of this Sherman Act which provides, in substance, that parties shall not monopolize trade in a particular industry, or shall not attempt to monopolize a particular industry which is engaged in interstate commerce.

Now unless this testimony which is about to be introduced has some bearing on those questions, then it will not be considered by the jury because it will not be relevant.

The fact alone that the union may have participated in acts of violence—and the Court by mentioning that
181 is not indicating in any respect that it did or did not—but acts of violence upon the part of the union, or the union members, would not be a violation of the anti-trust laws. And if acts of violence are the only things that are established in this record, then such acts would not be a violation of the anti-trust laws and the jury could not find against the union.

Testimony of Jack Shattuck

Mr. Kramer, with that explanation I am going to let him go into this matter.

Do you say that you are going to connect this testimony up?

Mr. Rowntree: Yes, sir. We have to connect the union up with our complaint. That is what it did. We said things in our complaint and we have to connect the union up with the conspirators in the conspiracy and the reason why these things were done.

The Court: The point is, Mr. Rowntree, do you expect to connect this theory of yours up with the testimony hereafter that relates to the problems that are involved?

Mr. Rowntree: That is correct.

The Court: All right. Upon that avowal of counsel the Court will hear the testimony subject to the explanation made to the jury.

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182 Mr. Kramer: It is our position, first, that some act remote and from somebody else with somebody else, if it were committed, even by union members, members of the union, could not be used to show a violation of the Sherman Act.

The Court: That is correct, unless it is connected up. But if it is a part of a conspiracy then it may have some bearing on the issues that are involved.

Mr. Kramer: But your Honor, our position is that they do not claim there was a conspiracy between the United Mine Workers and these small operators at all. He is claiming, I take it, some small operators which are wholly disconnected with us. There may have been even a violation of the contract, I don't know, but whatever it may have been it is wholly irrelevant and would be prejudicial, incompetent, and has no place in this case.

Acts of violence, evidence of acts of violence, do not make a violation of the Sherman Act unless, your Honor, it was

Testimony of Jack Shattuck

183 for the purpose—conduct that exists was for the purpose of doing an act that violates the Sherman Act. This is not competent.

We think it is an effort to get into this testimony, or into this record, matters that appear to be inflammatory testimony which has absolutely no relationship to a violation of the Sherman Act.

Your Honor recall this is not a violation of the common law.

The Court: Yes, I know that.

Mr. Kramer: And you have had this question before you before and it was on a theory of common law, but we don't have any such thing in this case.

The Court: The Apex case to which you refer holds, in substance, that acts of violence were not violation of the Taft-Hartley Act, and the Court has told the jury it is not a violation of the anti-trust law unless he connects this testimony up in some way.

I fail to see the relevancy of this at this time but you say you are going to connect it up?

Mr. Rowntree: Yes, your Honor. Fully one-half of that portion of our theory of the case dealt with the imposition of the national contract on small coal companies. Why did those companies sign the contract? Why was the union shop clause in it?

184 The Court: Is it your position that these acts drove these operators into the signing of the contract?

Mr. Rowntree: Yes, sir.

The Court: Coerced them into signing it; is that the position?

Mr. Rowntree: Yes, sir. It isn't just signing contracts for some companies. Some companies—it is enforcing that union shop provision and making the employees join a union whether they wanted to or not, and seeking to get authorization from employees to be their bargaining repre-

Testimony of Jack Shattuck

sentative by force like this. That is how the national contract was imposed on small operators.

Mr. Rayson: Mr. Rowntree states it is his theory that the acts that this witness is evidently going to testify about was one of enforcement of a union shop contract.

Your Honor will recall that Judge Miller in the Fentress case said that similar things did not make an enforcement of the contract. It actually was a requirement on the part of the union, something over and above the requirements of the contract.

So we don't think that under the law of the Fentress case, which is precisely on that point, that this testimony could have any possible relevancy to the union shop.

The Court: But he never had the anti-trust issue before him, did he—that is, Judge Miller?

Mr. Rayson: He did not have the anti-trust issue before him, your Honor, but he did have the question before him of the union shop. And he said in that case that the conduct designed to have men join the union under this same contract was not in furtherance of a union shop but it was a requirement on the part of the union to have the men to do something that was not required by the contract; which Mr. Rowntree says is the instrument by which this conspiracy was achieved.

186 And so we think certainly that theory is at fundamental odds with the law in that case formed by the Sixth Circuit.

Mr. Rowntree: Our basis is far beyond the defendant's basis. We say the union shop provision was in this contract for the same identical reason that these acts were done to make people join the union; that there is a basic reason beyond both of those, and that is the conspiracy which explains both the activities of these men out there and the presence in this contract of this union shop clause that the courts have had difficulty from time to time with.

The last case was this Perry Coal Company case where

Testimony of Jack Shattuck

the Court of Appeals in the Seventh Circuit had trouble with it and went to look at the conduct of the parties to see what it meant.

We are now going to the conduct of the parties. So really we have two or three different bases for putting this proof in and principally is to show the conspiracy and the purpose of these people and the means they carried out the conspiracy.

Basically we say that the National Bituminous Coal Wage Agreement was an instrument in carrying on this restraining of trade and the running of small companies out of business, and the reason that they were able to get small 187 companies to sign that agreement was this thing that we are going into now. It explains it. To say that we cannot go into this means that we would be volunteering, the small companies over the area, would be volunteering to do things and submitting themselves to liability for things which they could not possibly do, and we are showing why these people signed these contracts that they could not abide by, and that there was a plan that they could not abide by.

The Court: Well, subject to the objection, I will hear the proof. Go ahead.

By Mr. Rowntree:

Q. Mr. Shattuck, what happened there at the Boots and Cox mine while you were there? A. As I told you, I was there in pursuit of my business and to advise them that this mob was on the rampage. And as I talked to Mr. Boots, here they came.

Mr. Kramer: Of course, I am going to object to this type of language, "mob on the rampage". Your Honor has ruled that he may testify what he saw, but not a conclusion of that type.

The Court: That is correct.

Mr. Rowntree: That is correct.

Mr. Kramer: And will ask your Honor to instruct the jury.

Testimony of Jack Shattuck

188 The Witness: I am sorry.

The Court: You will disregard "the mob was on the rampage".

Tell what you saw, please, sir.

The Witness: Yes, sir.

A. A large group of men ran into this pit. I heard them cussing and calling names, and they said, they asked me what I was doing there and I told them and they said, "Well, you better get out." Well, they didn't have—I was talking to Mr. Boots at the time—

Mr. Kramer: Your Honor, Mr. Boots is a coal operator. I object to conversation between this witness and the man Boots and ask that the jury be instructed to disregard it.

Mr. Rowntree: I think the witness was about to recite a fact.

The Court: Objection sustained. Don't tell what you said to Mr. Boots or what Mr. Boots said to you.

Mr. Rowntree: I don't think the witness started to.

A. They asked me my business there and I told them. They told me to get out. Believe me, they didn't have to tell me to get out the second time. I was very happy to leave. While I was leaving, Mr. Boots was pushed quite roughly and he went down.

189 By Mr. Rowntree:

Q. How old a man is Mr. Boots, or was he? A. I would say at that time about 63, or 64, or 65, something like that, an elderly man. He was pushed in the mud, lost his glasses and was stomped and I went out, went on.

Q. Where did you go? A. Well, I went back to my car to get away.

Q. And where did you proceed to from there? A. Well, I couldn't go out the short way because so many cars were blocking the roadway, so I had to go out the long way to see some more of my customers who were up what is known in that country as Elk Valley. And by the time I got around to get to them to pursue my business, I was too late. They

Testimony of Jack Shattuck

had—this group of men had previously gone into the other places—

Mr. Kramer: I object to that. He did not see that. He got there and there was nobody there. That is the substance of what he testified. I do not mean to anticipate. Your Honor heard similar testimony and is as familiar with it as I am. I object to him testifying to something that he didn't see. When he got there everybody was gone. That is all he knows.

The Witness: I beg your pardon.

190 Mr. Rowntree: No, your Honor, the witness is not testifying to that effect. Counsel is anticipating something that the witness is not going to say.

The Court: You may continue.

A. As I came out of the Boots and Cox pit. As I told you, sir, I couldn't get back the short way. The cars that these men had come in were blocking the way, and I had to go around the long way, which I did, and went up and this group of cars with these same group of men in them that had been at the Boots and Cox pit were headed into the—is it all right if I give the name?

By Mr. Rowntree:

Q. Go right ahead. A. Of Mr. Frost and Mr. Parrish's pit. So I didn't—I was too late to get in there. I just went on. From there I went up to another pit. All right to name the pit?

Q. Yes. A. Phillips Brothers pit, and told them what was going on, and they had known about it and they were not working.

Q. Where is the Frost and Parrish pit with reference to Boots and Cox mine? A. It is up the road a little bit at a place called Whistle Creek.

Q. Can you point it out on the map, or do you think you can find it? A. I sure can. I think I can. (Witness
191 went to map.) Right here (indicating). That is Whistle Creek as it flows into Big Elk Creek right there. This goes over into Capuchin.

Testimony of Jack Shattuck

Q. Let's put a green zero there. A. And I went from here on up to Pioneer.

Q. Put a green zero on Frost and Parrish mine. A. All right. (Witness marked map.)

Q. That is a green X. A. Isn't that what you wanted?

Q. That is all right. Take your seat, Mr. Shattuck.

Mr. Kramer: I take it, your Honor, the record may show a continuing objection from us on all this line of testimony without repeating it each time?

The Court: Yes, sir.

Unless the union is connected up with these activities, unless it has some bearing upon the charges in this complaint, the jury will not consider the testimony for any purpose.

By Mr. Rowntree:

Q. I believe, Mr. Shattuck, Phillips Brothers Coal Company is down in the vicinity of Pioneer in Campbell County?

A. In the vicinity of Pioneer, yes, sir.

Mr. Rowntree: That is all.

192

CROSS EXAMINATION

By Mr. Kramer:

Q. Are you still connected, Mr. Shattuck, with Power Equipment Company? A. No, sir, I am not.

Q. What are you doing at the present time? A. I am in the same kind of business. I have my own company.

Q. And you are selling to coal producers, strip operators? A. Anyone who handles earth moving equipment, sir.

Q. And a large part of your customers are coal producing companies today, are they not? A. Not as large a part as there used to be.

Q. I did not ask you, my friend, for a comparison. But a large part is to coal producers, is it not? A. Sir—

Q. I will put it this way, a substantial part—I don't want to get in an argument with you. A. No, no.

Q. You do not sell much to them? A. I sell some to them, yes, sir.

Q. Okay. I believe that is all.

*Testimony of Andrew Frost***REDIRECT EXAMINATION**

By Mr. Rowntree:

193 Q. Mr. Shattuck, did you testify before that a substantial part of your customers were coal producers in 1955? A. Yes, sir.

Q. And at the present time is it your testimony—

Mr. Kramer: I object to leading, your Honor. It is very leading.

The Court: I will sustain that.

By Mr. Rowntree:

Q. Is that still true today? A. The percentage is much less.

Mr. Rowntree: That is all.

Mr. Kramer: No further questions, your Honor.

(Witness excused.)

ANDREW FROST

a witness called by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Robertson:

Q. State your name. A. Andrew Frost.

Q. Where do you live, Mr. Frost? A. Williamsburg, Kentucky.

194 Q. What do you do now? A. At the present?

Q. Yes. A. I am general superintendent for Pioneer Fuel Company, production superintendent.

Q. I will ask you, Mr. Frost, whether or not in early 1955 you went into the mining business? A. Yes, sir.

Q. What sort of a business organization was this, partnership? A. It was a partnership organization with my brother-in-law and myself, Byrd Parrish. We was operating as Parrish and Frost Coal Company.

Q. Now where was this company operating? A. We was at—just out of Newcomb, Tennessee on Whistle Creek Road.

Q. Now we have a map here, which I wish you would

Testimony of Andrew Frost

stand down and indicate the approximate location of your pit at that time. Mark that with an "F", if you would, a red "F". A. Well, we were right up on the Elk Valley Road out of Newcomb, turned up Whistle Creek to the right and we were just about in here close to this green mark, right close to the road on the right-hand side. (Witness marked map.)

Q. Take your seat, please. Mr. Frost, did you
195 early in 1955, say February or March, somewhere in through there, have a visit from a group of men or a man or any men? A. Yes, sir. We started this operating in the early part of 1955; if I am not mistaken, it was in January. Around the latter part of February or so, close to that time, two men came to our pit, Leon Morgan, John Lynch, Junior, and—

Q. What did they want?

Mr. Kramer: Your Honor, we object for reasons heretofore given.

The Court: Members of the jury, this will not be considered for any purpose, unless these men are connected up with the union in some way and unless this testimony has some bearing on the alleged conspiracy that is involved, and before it can be relevant to any issue, it must be connected up, first, with the union, if it can be connected up. That is Morgan and this other man had some connection with the union, were representing the union, who is one of the defendants in this case. Secondly, that what was done on this occasion had some bearing on the alleged conspiracy that is involved.

You may proceed.

By Mr. Robertson:

Q. Now what did Leon Morgan and John Lynch, Junior
want on that occasion? A. Somewhere close to noon
196 I was out at my car eating lunch, and I was by myself, they came up and they kept talking about my brother-in-law and myself signing a union contract. They were both kind of agitating like, you know, kept insinuating

Testimony of Andrew Frost

that we would sign the contract. I told him no, that I had no business talking to them about signing a contract because they wasn't the union organizer; if I talked union contract with anybody, I would talk to Ed Daniel.

Q. Who is Ed Daniel? A. Ed Daniel was the union organizer of the Jellico District at that time.

Q. All right. Did these men leave? A. Well, after a period of time, but—

Q. Let me ask you this, Mr. Frost. While they were talking to you, did you notice anything unusual in or about their clothing? A. Yes, sir.

197 Mr. Kramer: Now, Your Honor, we object certainly to that line of testimony which can have no bearing, as we see it, on this type of lawsuit. They were not union organizers, his testimony is, Your Honor.

The Court: Of course, I don't know—

Mr. Robertson: I withdraw the question.

The Court: All right.

By Mr. Robertson:

Q. I will ask if anyone else came to your pit that day? A. Yes, sir.

Q. Who? A. Ed Daniel came back with about four or five other men later that afternoon, after I had told John Lynch and Leon Morgan that I would not talk to them about signing a contract, if I talked to anybody, I would talk to Ed Daniel. Ed Daniel brought these men to the pit that afternoon, and kept insisting that we sign a contract, and I said, "Ed, we have just got started, if you would give us a chance to see if we could produce coal at a profit, then we may talk contract to you, but we couldn't do it now," because we were just getting started and had invested our money in this equipment, and we had to have a chance to get started in our operation.

198 Q. And I'll ask you, Mr. Frost, were Leon Morgan and John Lynch, Jr., with Ed Daniel when he came to your pit that afternoon? A. Yes, sir. He and about three

Testimony of Andrew Frost

—the two of them and about three other fellows as well as I can remember distinctly. I didn't know their names.

Q. How did Mr. Daniel talk to you? A. Well, he kept—he was—foul language all the time. I mean it was just definite that we would sign a contract, if we didn't sign a contract, that we would never haul any more coal out of that pit, and he said, "Let this be your last coal hauled today." I said, "Well, it is our last," the last truck was just coming out of the pit. I said, "We don't intend to haul any more coal today, but ~~we~~ will haul again Monday," and he said, "No, you won't haul Monday," so he left the pit, and we did haul coal after that time.

Q. All right. Now could you tell the Court and jury what the next episode to take place at your pit was? A. The next episode was on April the 6th, 1955.

Q. And what happened on April 6, 1955? A. About eleven o'clock, something close to that, there was a big mob of men came to the pit. It's hard to estimate the number, it was such a large group. They came up, and my brother-in-law and I—we operated our own equipment, but had
199 four other employees, laborers working with us. I was running the shovel. Dave Lowe was—later on I took it he was the leader of that mob to our pit—he came up and waved that I shut the machine down, and I didn't pay any attention to him at the start.

Q. You were operating the machine at that time? A. I was operating the shovel, yes, sir.

Q. All right. A. And then I could look out and see that there was a big mob of men, and then he kept insisting that I shut the machine down, and he was standing on the ground, and I set the bucket down, and went back in and shut the shovel off, and just as I shut the shovel off and started to swing down off the machine, I was hit and knocked to the ground.

Q. Where were you hit, Mr. Frost? A. Up on the side of the head.

Q. What were you hit with? A. Either a blackjack or a

Testimony of Andrew Frost

gun butt, I'm not positive, because—the knot is there still though.

Q. I'll ask you when you—well, were you knocked out?

A. Just temporarily. I don't know how long. When I came to, I was on the ground and all the other men, six of us all told, and they were all on the ground.

Q. What were the conditions in that pit? A. The
200 conditions was muddy, it was raining that day. They had us all on the ground, and I came to, and they was stomping, and “don't let them up until you see blood running out of their mouth,” and “make they lay there.”

Q. That remark was made by some of the mob? A. That was the remarks made by the mob, yes, sir.

Q. Did they stay there until they saw blood running out of the noses and mouths? A. Yes, sir, it was running.

Q. When you left your—when you had to leave your pit at that time to go back to your home in Williamsburg, did you have to go back through Jellico? A. Yes, sir.

Q. Did you go through Jellico that afternoon? A. Well, it was—I'd gather we—after the mob got out of the pit, why we all gathered up in a group up in the woods, kind of pull ourselves together a little bit, and we left the pit, I'd say somewhere around two o'clock that afternoon, and went through Jellico on the way back to Williamsburg, and still there was groups of men a-standing around, but we didn't see any big mobs together, but there was noticeable groups a standing around in Jellico there.

Q. Now were you able to resume your operations?
201 A. No, sir.

Q. The next day? A. We tried to resume our operations about—I was in the bed under the doctor's care for about—something over a week, and when I got better, about two weeks later, we went back to the pit and tried to resume operations, but couldn't get any of our employees to work for us.

Q. Why wouldn't they? A. They were afraid. So we hired two other men to come out and guard for us.

Testimony of Andrew Frost

Mr. Kramer: We are going to object to this claim of fear of operation, because that is not anything at all within the scope of the trial that we are now engaged in.

By Mr. Robertson:

Q. You didn't sign a contract?

The Court: Wait a minute. What is the—

Mr. Robertson: I withdraw the question.

Mr. Kramer: And I ask that the jury be instructed to disregard their testimony.

The Court: Then the jury will not consider the testimony that the men were afraid, allegedly afraid to return to work. It is withdrawn from the record.

By Mr. Robertson:

202 Q. At any rate, Mr. Frost, you didn't sign a contract? A. Not at that job, no, sir.

Q. And you were not able to get men? A. Sir?

Q. You were not able to get men to come back to work for you? A. No, sir. We had to give up our equipment and discontinue the operation altogether.

Q. Now, I'll ask you what you did about a job after that. A. I started to work for Osborne Mining Company after that.

Q. Now where was this company operated? A. That company was operating on the Gatliff property over in Kentucky out of Jellico.

Q. When was this approximately that you went with them? A. That was, I'd say I worked for them about four months, June, July, August, and September.

Q. Now what job did you have with Osborne Mining Company? A. Shovel operator or dozer operator, either one that was available to run.

Q. Was Osborne a stripping operation? A. Yes,
203 sir.

Q. And what shift were you on there? A. Night shift.

Q. And I'll ask you under what conditions you had to work there? A. We was working under a strain all the time.

Testimony of Andrew Frost

Mr. Kramer: Your Honor, we object to that in the Osborne Mining Company. It is another alleged incident that happened at a different place at a different time. I don't think it is competent. It is not his own operation at all. It is entirely different.

The Court: Well, what is the purpose of this?

Mr. Robertson: We will withdraw the line of questioning.

The Court: All right.

By Mr. Robertson:

Q. Do you remember a trial at Jacksboro when certain individuals were tried there in a criminal case regarding alleged beating of John Van Huss. A. Yes, sir.

Q. Did you attend this trial? A. I was at that trial every day, sir.

Q. I'll ask you if you saw any union representatives at that trial? A. Yes, sir.

204 Mr. Kramer: Now, Your Honor, I object to that, and move to strike that. I can't see what the trial of a case of some other type in a state court at another time has to do with this case. That certainly isn't an evidence of a conspiracy, the fact that union people were present when some case was tried, if they were proved to be members of a union, and I object to it as being irrelevant and immaterial and ask the Court to instruct the jury to disregard it.

Mr. Robertson: Your Honor, in order to connect up the union, we are showing that these people who came to them were union men, that they were tried—

Mr. Kramer: I object to any reference to this trial in the presence of the jury.

Mr. Robertson: Your Honor, that is connecting the union, and that is what it is offered for.

Mr. Rowntree: If Your Honor please, to save time, we will prove this by a representative of the union.

The Court: All right.

Mr. Kramer: Your Honor, I am going to object to the conduct of counsel attempting to go just so far and with-

Testimony of Andrew Frost

drawing it. This type of proffered proof I think can be prejudicial. This is the third instance of this sort
205 we have had in the last few minutes.

Mr. Rowntree: We did this in the Osborne trial, connected the union by this very witness, and now counsel is objecting. That is why we do it. In order to save time, we will do it another way.

The Court: All right, go ahead.

Mr. Robertson: That is all I have of this witness.

CROSS EXAMINATION

By Mr. Kramer:

Q. Presently you are operating a coal business, aren't you? A. Sir?

Q. Presently you are operating a coal business? A. Presently?

Q. Yes, sir. A. No, sir, not myself, no, sir.

Q. You are operating with the Pioneer Fuel Company? A. No, sir.

Q. You are working with them? A. I am working for them.

Q. Superintendent, you said? A. Yes, sir.

206 Q. I thought you meant connected officially, but you are superintendent? A. Yes, sir.

Q. That is a non-union company? A. Yes, sir.

Q. Selling coal to TVA? A. No, sir, not that I know of. I have no jurisdiction over the market, just production.

Q. You don't deny that they are selling coal to TVA? A. I just—

Q. You just don't know, that's all? A. No, sir.

Q. How long have you been working for this Pioneer Fuel Company? A. One month, sir.

Q. Just one month? A. Yes, sir.

Mr. Kramer: That's all. Your Honor, I want to be sure and not continue to do something. I want the record to show a continued objection to all of this line of testimony in all of these instances so that I do not need to interrupt all the time.

Testimony of H. B. Wicks

The Court: All right.

Mr. Robertson: Call H. B. Wicks.

207

H. B. WICKS

a witness called by and on behalf of the defendants, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. Robertson:

Q. State your name. A. H. B. Wicks.

Q. And where do you live, Mr. Wicks? A. Robbins.

Q. Are you employed at this time? A. No, sir.

Q. How old are you? A. Fifty-two.

Q. Have you been engaged in the mining business most of your life? A. Yes, sir.

Q. In what capacity? A. Well, I've been in it about every way. I've been an operator myself.

Q. What's been most of your experience? As a miner?
A. Yeah, coal miner.

Q. Deep or strip? A. Deep mine.

208 Q. You mentioned going into business, when was that, Mr. Wicks? A. It was '57.

Q. How long did you operate? A. About seven months.

Q. Did you have a case in this Court? A. Yes, sir.

Q. Over a year or so ago? A. Yes, sir.

209 Q. Was that suit based on a breach of contract of the United Mine Workers?

Mr. Kramer: We object to that.

The Court: Sustained. That has nothing to do with this case.

By Mr. Robertson:

Q. Were you a member of the United Mine Workers in the spring of 1955? A. Yes, sir.

Q. Mr. Wicks, I will ask you, did you attend a meeting of union members in Jellico? A. Yes, sir.

Q. Sometime in the spring of 1955? A. Yes, sir.

Q. Can you fix the date on that? A. No, sir.

The Court: Did you want to show by him that this suit

Testimony of H. B. Wicks

involved these same royalties; is that what you had in mind?

Mr. Robertson: No, your Honor.

The Court: Then that is all right. I have ruled correctly.

Mr. Combs: What year were you asking about?

Mr. Robertson: 1955.

By Mr. Robertson:

210 Q. Do you remember when coal was dumped in the streets of Jellico? A. Yes, sir.

Q. When was this meeting which you attended in relation to that date? A. The day before.

Q. I see, and where was this meeting, Mr. Wicks? A. It was in Jellico.

Q. In a union hall? A. They told me it was Morley local, is all I know about it.

Q. Did anybody notify you to be at this meeting? A. Yes.

Q. Who notified you to be there? A. Well, I don't know but three of the men. There was six in the car but I just knowed three of them. It was Henry Jones and Estel Jones and Ed Brandenburg.

Q. You mean you drove over with someone from your house? A. No. They notified me, it was the night before, to meet them at the mine office the next morning at 6 o'clock to go to this meeting.

Q. And who was it that notified you? A. Henry Jones and Estel Jones and Ed Brandenburg.

Q. Do you know whether or not—

211 The Court: Ed who?

The Witness: Brandenburg.

Q. Do you know whether or not Henry Jones is a pensioner? A. All I know is what he told me. He told me he was.

Mr. Kramer: Your Honor, I thought he was going further, and I move to strike.

The Court: Yes, that would be hearsay. That would not be competent.

Mr. Robertson: I agree.

The Court: Motion is sustained to strike.

By Mr. Robertson:

Q. Who were the speakers at this meeting, Mr. Wicks?

A. Well, there was several speakers. I really didn't know them all but I knowed Ed Daniel and Taylor Maddux, and I don't know the last man that spoke—I didn't know him personally but I know who the announcer said he was. Said it was Albert Pass from Middlesboro.

Q. Can you tell what the purpose of that meeting in Jellico was? A. Well, the speakers said there was coal being loaded there in Jellico for \$2.00 a ton and they wanted it stopped.

212 Q. Who made these remarks that you recall? Just tell who they were and what they said, the ones that you remember. A. Well, now I never paid much attention to what Ed Daniel and Taylor Maddox said, but I did Albert Pass because it seemed like he really wanted us to do something about it.

Q. All right, will you tell what Albert Pass, or the parts you remember, the remarks he made? A. Well, he said that the coal was being loaded there in Jellico for \$2.00 a ton. And he said, "You men knows that that is got to be stopped." And said, "It don't make no difference what it takes to stop it either." And he said, "If any of you men get in any trouble stopping it, all you have to do to see me is look back. I'll be there."

Q. Did you attend any other meeting or gatherings any time after this meeting at Jellico about which you have just testified? A. I was ordered out on a picket line after that. I don't know whether it was next day or the second day after that. I believe it was the second day after that.

Q. All right, where did you go. First of all, where did you gather? A. We gathered down at a tavern on Clear Fork or Clear Creek. Somewhere down there. I forget whether it was Clear Fork or Clear Creek.

213 Q. Is that just out of Jellico? A. Yes, sir.

Q. All right. Now what time of the day was this

Testimony of H. B. Wicks

gathering? A. We left Westburn about six o'clock. I have an idea it was about seven when we got there.

Q. Now how many gathered there, approximately? A. There was—I don't know exactly. There was six carloads of us.

Mr. Kramer: Your Honor, I want to again object for the same reasons as heretofore given.

The Court: Same ruling.

Mr. Kramer: Now before we get too far away from it, your Honor, with reference to the statement that this witness says that one Albert Pass made, whom he thinks was connected with the union, was from Middlesboro, when he said, "I'll be there, look back," or something to that effect. To that extent—I am not objecting to the entire statement, but to that extent I object to that statement and ask that it be stricken.

The Court: Unless Albert Pass is connected up with the union, unless this meeting is connected up with the union, the jury will not consider it. But if it is and it has any bearing upon the alleged conspiracy, it may be considered by the jury for whatever it may be worth.

214 Mr. Kramer: In order that I may not overlook the real point, because your Honor has already ruled on it and my continuing objection, but I do further object to his statement, "Look back and I'll be there." It may be an intimation of a threat or something of that sort, and we say it is wholly irrelevant and immaterial in this case, and I object to that.

The Court: Overruled.

By Mr. Robertson:

Q. Mr. Wicks, who notified you of this gathering? A. The same men.

Q. And who was that? A. Henry Jones and Estel Jones and Ed Brandenburg. I don't know the other three men. There was always six men in the car when they come.

Q. Did you ride with these men from your home to this gathering? A. No.

Testimony of H. B. Wicks

Q. Did you drive over there in a car? A. No, sir, I rode with another fellow.

Q. All right, what happened there after you gathered? First of all, I will go back to the question that I asked that I don't believe you answered, and that is how many approximately gathered there on that occasion? A.

215 There was six carloads of us and they said there was six men to the car. I know there was six in the car I rode in.

Q. All right. Where did you go from there? A. We went to a strip pit somewhere up in Kentucky.

Q. Did you know at the time whose strip pit it was? A. No, sir.

Q. Have you learned since that time whose strip pit it was? A. Yes, sir.

Q. Whose was it? A. Osborne.

Q. Just state briefly in your own words, Mr. Wicks, what took place there on that occasion.

Mr. Kramer: Same objection as previously, your Honor.

The Court: Same ruling.

By Mr. Robertson:

Q. Go ahead. A. We just drove up there and drove up to where we could see the strip pit and see the machinery working up there, and the men all got out of the machinery and went to the woods—at least one of them did. I seen one of them. The other men said that all of them got out and went to the woods.

216 Q. Don't tell what somebody else said. Just testify what you saw. A. Well, the leader of our gang motioned us to turn around. He done turned around, you see, and he motioned us to turn around and follow him, and we just come back out of there. That is all there was to it.

Q. How could you tell who the leader of your gang was? A. Well, he had a red cap on.

Q. Well, where did you go from Packard then? A. We come back to Jellico.

Q. What took place in Jellico? First, let me ask you this.

Testimony of H. B. Wicks

Were there other gangs there congregating other than yours? A. Yes, sir.

Q. And how many would you say gathered there on that occasion, roughly? A. About 400.

Q. And what happened after you congregated there in Jellico? Was this in the downtown business district of Jellico? A. Yes, sir.

Q. What happened there? A. We formed a line and marched through town, marched through some of the buildings.

217 Q. Just in and out of the buildings? A. Yes sir.

Mr. Kramer: Now, your Honor, we are objecting to that and moving again to strike. They don't claim this was at the mine, said it was down in the Town of Jellico and some people walked through the streets and walked through some buildings. I don't see where that is material for what is claimed here..

The Court: Overruled. Unless this is connected up with the matters involved in this suit, it will have no bearing on the case.

It is my understanding that you expect to connect these matters up with the alleged conspiracy and with the union? Is that the purpose of it?

Mr. Robertson: Yes, your Honor.

The Court: All right.

Can this man come back tomorrow? It is 4:30 by my watch, or almost 4:30.

Can you come back?

The Witness: Yes.

The Court: Don't talk about the case, now. Don't let anybody talk to you.

Adjourn court until tomorrow morning at nine o'clock.

(Thereupon, at 4:30 o'clock, p. m. court adjourned until Tuesday, April 18, 1961, at 9:00 o'clock, a. m.)

218 Tuesday, April 18, 1961

(At 9:05 a. m., court convened pursuant to adjournment, when the following proceedings were had.)

Testimony of H. B. Wicks

The Court: Gentlemen, call your witness, please.

Mr. Robertson: Call Mr. H. B. Wicks, please.

H. B. WICKS (Resumed)

having been previously sworn, resumed the stand, was examined, and further testified as follows:

DIRECT EXAMINATION (Continued)

By Mr. Robertson:

Q. Now, Mr. Wicks, I believe you testified yesterday that you were called out to a meeting in Jellico sometime in the spring of 1955 at which time you stated that one Albert Pass made a talk there. A. Yes, sir.

Mr. Rayson: Your Honor, we object to the leading of this witness.

The Court: Yes, it is leading.

By Mr. Robertson:

Q. Well, I'll ask you, Mr. Wicks, do you know, if you know, what position Mr. Albert Pass holds with the United Mine Workers of America, if any? A. At that time he was secretary-treasurer.

219 Q. Of what? A. Of Middlesboro, secretary-treasurer of the United Mine Workers.

Q. All right. In this caravan, two or three days later, that you testified about, which went to Kentucky and back to Jellico, did you know any of the persons in the lead car of that caravan? A. Yes, sir.

Q. Could you state who they were? A. One of them was Tom Taylor.

Q. Now who is Tom Taylor? A. He was the president of Westburn local.

Q. Were you a member of Westburn local at that time? A. Yes, sir.

Q. All right, go ahead. A. Charlie Williamson and Bob Williamson. I forget the other two men's names. I know them, but I forgot their names.

Q. State whether or not Dave Lowe was in that car. A. Yes, sir.

Testimony of H. B. Wicks

The Court: Who?

Mr. Robertson: Dave Lowe. Your witness.

220

CROSS EXAMINATION

By Mr. Rayson:

Q. Mr. Wicks, I believe that you testified about the same matters that you are now testifying about in this very courtroom about two and a half years ago, is that correct? A. Yes, sir.

Q. Now you have told us that at one point you were with a Henry Jones and an Estel Jones and also an Ed Brandenburg in going from your home to Jellico, is that correct? A. No, sir.

Q. What did you tell us about Ed Brandenburg? A. I told you that he was in the car that come and notified me to go to this line.

Q. Now in the previous time you testified, you made no such statement, is that not correct, Mr. Wicks? A. Yes, sir.

Q. Are you saying that you told the court that Ed Brandenburg came and told you that he was in the car? A. No, sir, Ed Brandenburg didn't have anything to do with telling me. It was Henry Jones.

Q. Did you testify on the previous trial that Ed Brandenburg was there? A. I don't know as—I don't believe I did, but Ed Brandenburg was in the car. I forget—

221 Q. Now on the previous trial, Mr. Wicks, you testified about hearing Albert Pass make a talk, did you not? A. Yes, sir.

Q. And I believe at that time you made no mention of any such statement by him that coal was being loaded in Jellico for two dollars a ton, you made no such statement, is that not correct? A. Yes, sir, I did.

Q. You did make such a statement, or you did not? A. I did.

Q. Where are you employed at the present time, Mr. Wicks? A. Nowhere.

Q. How long have you been unemployed? A. Two years.

Testimony of Will Hood Wender

Q. Mr. Wicks, I believe that sometime ago you were convicted of a felony in the Criminal Court of Campbell County, were you not? A. Yes, sir.

Q. Was that in 1935? A. '35?

Q. Yes. A. No, sir.

Q. When was it? A. '40.

Q. 1940? A. Yes, sir.

222 Q. Following that conviction, I believe that you spent a period of time in the state institution, is that right? A. Seventeen months.

Mr. Rayson: That's all, Your Honor.

The Court: Now, members of the jury, that proof is competent as bearing on the credibility of this witness, that is the only purpose for which it is received as evidence in this case.

RE DIRECT EXAMINATION

By Mr. Robertson:

Q. Mr. Wicks, did that conviction have anything to do with any parties to this suit whatsoever? A. No, sir.

Q. What was the nature of the crime, Mr. Wicks? A. Man-slaughter.

Mr. Robertson: Your witness.

Mr. Rayson: Nothing further.

Mr. Robertson: Call Mr. Will Hood Wender.

223 **WILL HOOD WENDER**

called as a witness by and on behalf of the defendants, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Robertson:

Q. What is your name? A. Will Hood Wender.

Q. And where do you live, Mr. Wender? A. I live in Jellico, Tennessee.

Q. What do you do? A. At the present time I am working at Jellico Stone, driving a truck.

Q. What were you doing in the spring of 1955? A. I was hauling coal.

Testimony of Will Hood Wender

Q. State whether or not during the spring of 1955 you saw an unusual occurrence in Jellico? A. I did, sir.

Q. Can you give the date of that? A. Yes, sir. I can give the—it was in April of 1955, sir.

Q. What time of the day was this? A. It was in the morning. About 9 in the morning, sir.

Q. Where were you at the time that you saw this?
224 A. I was in Jellico across from Osborne Coal Company's tippie or loading ramp.

Q. And just state in your own words, Mr. Wender, what you saw there on that occasion.

Mr. Kramer: May it please the Court, we renew our objection because it is the evident purpose of counsel to go into transactions similar to what were testified by other witnesses for the reason given in yesterday's objection. And we renew that objection, your Honor, on the ground it is incompetent, irrelevant and immaterial and for the reasons heretofore given to the Court without repeating them.

In addition to that ground of the objection, I make a further ground to the objection, your Honor ruled on yesterday such evidence was competent on the avowal of counsel that they would later connect it up with certain acts or with some course of conduct or some course that would at least make a prima facie for a violation of the Sherman Act.

We believe, your Honor, that there must be some prima facie showing of overt acts or some course of conduct on the part of one—or either of the original plaintiffs, the trustees of the welfare fund, and/or the defendant to the cross action, the United Mine Workers of America,
225 showing that there was a conspiracy and that these people entered into it before this type of testimony would be competent for any purpose, and prima facie proof of the establishment of a conspiracy or of an intent. We think that requirement is necessary before this type of proof can be introduced, and for that further reason, as well as for the additional reason, we object to the introduction of this testimony.

Testimony of Will Hood Wender

Mr. Robertson: Your Honor, we contend that all of this was the union's part in this conspiracy, and we are gradually connecting this to the union, and we will show how it was part of this conspiracy.

We are contending in this suit that it would be impossible for the union to have taken part in a conspiracy and violated the Sherman Anti-trust Act without also conspiring to avoid the labor laws in effect at that time. For that reason, we are offering this testimony for the same purpose.

The Court: Members of the jury, unless this testimony is connected with the trustees in some way it will not be considered by the jury as bearing on the trustees' phase of the lawsuit.

Unless this testimony is connected up with the United Mine Workers of America, and unless a conspiracy is established, and unless the United Mine Workers is shown
226 to be a part of the conspiracy, then you will not consider this testimony for any purpose.

But if the trustees are connected with the alleged conspiracy, and if the United Mine Workers of America are connected with the alleged conspiracy, then such testimony may be considered for what bearing it may have on those matters.

In that connection, one of the charges of Phillips Brothers Coal Company is that the trustees caused beneficiaries of the trustee fund to picket coal operators and to engage in other union activities.

Now if this testimony has any bearing on that subject it may be considered by the jury for whatever bearing it may have on that subject and on the other subjects just indicated.

With that explanation, Mr. Kramer, the objection is overruled.

Mr. Kramer: May I add one word. Your Honor understands I am objecting to the order of proof as well as the introduction of the testimony as a whole and insisting that there must be a prima facie case of conspiracy before this type—introduced before this type of evidence can be in-

Testimony of Will Hood Wender

227 introduced even if we are wrong in our original insistence and then we have this insistence in addition.

The Court: I understand.

* * * * *

The Court: But these matters, these alleged conspiracy cases are complicated at best, as you know, and the Court is forced to depend on counsel for each side to link this testimony together so as to have a bearing on the issues.

If counsel for either side fails in that respect, then you may renew your motions at the proper time and the Court will consider them. If these matters are not connected up, Mr. Kramer, and you make a motion at the proper time to delete this testimony, or like testimony, from the record, then the Court will give that motion proper consideration.

* * * * *

By Mr. Robertson:

230 Q. All right, Mr. Wender, just state what you saw there in Jellico on that occasion. A. Well, I was in Jellico and a car parked across from Osborne's tippie, loading dock, and a group of men came into the parking lot and cross in front of Osborne's tippie, and coal trucks coming into Osborne's tippie and these other tipples around down there, and this group of men were stopping these trucks and making the men dump them and abused them.

Q. Was this Osborne tippie located in downtown Jellico?

A. Yes, sir, it sure is.

Q. How many trucks did you see there which were dumped by this group of men? A. They dumped several trucks that day, that morning. They just stayed there about 20 minutes and I seen around five dumped, trucks that were dumped, and one of the drivers run off from the truck and this group of men, or mob, came down there and tried to catch him but he got away. And they tried to look in the truck to see if the key was there in the truck and apparently it wasn't, so they went on back over in the parking lot and more trucks come in all the time. This Barton boy who was driving a

Testimony of Will Hood Wender

truck, he came into the parking lot—

231 Mr. Kramer: Just a moment. Your honor, I want to make a further objection. I do not understand under your Honor's previous ruling you have permitted the introduction of all this detail. I think your Honor has permitted, as I understand your Honor's ruling, the introduction of testimony showing certain occurrences. I am going to object to the detailing of what happened in connections with those occurrences.

The Court: Well, counsel, I hope you don't go into it in any more detail than you feel is necessary to establish your contention in the matter. Let's not go into any of these details unless you feel it is absolutely necessary.

Mr. Robertson: Yes, your Honor.

By Mr. Robertson:

Q. All right, how long did that occurrence last? A. In the City of Jellico?

Q. Yes. A. About 20 minutes.

Q. And then just state what happened after that. A. Well, the group of men started leaving the parking lot and getting into cars, headed toward Newcomb, and these cars would pull up there and the men get in them, headed toward Newcomb. So they had one man over in the field unloading a truck there at that time, an old man, making him shovel it off his truck. So both of them left going toward Newcomb and I turned my car around and followed them toward Newcomb. So I got to Newcomb and they had a traffic director up there, George Smith. He is one of the men that was in Jellico there. And he was directing some of the men on up toward Elk Valley and some was going on into Lonzo Cox's stripping pit. So I went on up to Lonzo Cox's stripping pit and pulled down in the pit to turn around, and I seen some men hitting at Lonzo Cox, and he had got away from them and was going up the bank there in the pit, and he got up on top and fell, staggering and fell like he was hurt pretty bad.

232

Mr. Kramer: Of course I object to that sort of statement.

Testimony of Will Hood Wender

The Court: Sustained.

By Mr. Robertson:

Q. Just state what you saw. A. Lonzo, there was a group of men down there, a bunch of men down there in that pit cussing and hollering and raising the devil down there, milling around. So Lonzo got up on top of the pit—why he had a handkerchief over his mouth and was dusting dirt off his britches where he had been—like he had been down. I don't know whether he had been down other than the first time I saw him fall or not, but he was dusting the dirt off his britches, holding a handkerchief over his mouth and didn't look like he could hardly walk the way he was walking.

233 — Then I finished turning around—I stayed there two or three minutes. I finished turning around and started toward Jellico.

Q. Did you see anyone on your way back to Jellico? A. Yes, sir, I seen Mr. Daniel. He pulled into the D & M Tavern in front of me, in the driveway there, just off the highway.

Q. Is that Mr. Ed Daniel? A. Yes, sir, Mr. Ed Daniel. There is a group of cars that pulled in by him that were in front of me. There was also a whole bunch of cars there. They just followed each other into the driveway. They were all gathering up there talking and I came on to town.

Q. Do you know who Mr. Ed Daniel is? A. Yes, sir. At that time he was with the United Mine Workers, a district representative or something—I don't know just exactly what that was.

Q. Did these cars, when they left Jellico going on this caravan, did that caravan ever get out of your sight? A. No, sir, it sure didn't.

Q. Do you know that that was the same group of men in Jellico? A. Yes, sir, it most certainly was.

Mr. Robertson: Your witness.

234 Mr. Kramer: Just so the record is straight, I understand from yesterday your Honor permits us from making the objection each time and to let the record show

Testimony of Wilt Hood Wender

a continuing objection to this type of testimony for the reasons given.

The Court: Yes, sir.

CROSS EXAMINATION

By Mr. Rayson:

Q. As of April 1955 you had been hauling coal by truck for quite a while, is that correct? A. Yes, sir, it was.

Q. Did you drive your own truck? A. I drove my father's truck.

Q. Drove a truck for your father? A. Yes, sir.

Q. What was your job in driving this truck? A. Well, I just—my father let me have the truck to try to make a living with and I drove it and hauled coal to Osborne.

Q. You would haul coal from these little coal mines to the tipple in Jellico? A. That is right, sir.

Q. You would go back and forth from the coal mines to the tipple, is that correct, two or three times a day? A. Yes.

Q. And how long would you say you had been doing
235 that as of April 1955? A. You mean how long had I been hauling—

Q. Had you been doing it several years or how long? A. I have done it off and on all my life.

Q. You have done it since then? A. I have—since that time?

Q. Yes. A. Not to Osborne, no. They put them out of business.

Q. You mean you think Osborne quit business then? A. I don't know, but I never did haul any more coal to him.

Q. Your truck was never dumped? A. No, sir.

Q. You continued to haul coal from these same coal mines after that occasion, did you not? A. Not for a while, no, sir.

Q. Well, after that time you did haul coal? A. I hauled for Gilehrst and Son, but I didn't haul for Osborne.

Q. Didn't you haul from some of the little mines out on Buck Creek? A. Yes, sir.

Testimony of Will Hood Wender

Q. They were all non-union mines, weren't they? A. I don't know.

236 Q. Well, you know they were non-union mines before April 1955 and after April 1955, don't you? A. I never did ask.

Q. Now, Mr. Wender, you have worked for a stone company now, is that right? A. That is correct.

Q. How long have you been working for them? A. I worked for them all last summer and then I have worked for them this time about a month.

Q. Are you driving a truck for them also? A. Driving a Euc, back dump Euc truck.

Q. Have you done anything else, other than that, except to haul coal? A. For the last, up until I got that job, I was working for Jellico Stone. I got run over with a truck. I didn't do anything until I went back to work for them.

Q. Well, other than your work as a driver for the stone company, have you worked since 1955 in the coal business trucking coal? A. I have hauled coal from Gilchrist and Sons, Crotches Creek tippie to Gilchrist and Son's loading ramp in Jellico.

Q. You have done that since 1955? A. Yes, sir.

237 Q. Has that been your principal occupation since then? A. No, sir.

Q. Other than the stone business? A. No, sir. I have worked as a mechanic in Cincinnati, Ohio for about a year, and I worked for Terminal Garage here in Knoxville since then. I have worked for G. P. Foods here in Knoxville, and worked some in a drygoods store.

Q. All right, let's talk about this day in April. You say you were parked in a car across the street from this tippie in Jellico, is that right? A. Yes, in a Ford convertible with the top down.

Q. Was anyone with you? A. Yes, sir, there was.

Q. Who was with you? A. Ray Sadders.

Testimony of Will Hood Wender

Q. Did he remain with you all day? A. Yes, sir, he sure did.

Q. It was a rather drizzly day, wasn't it? A. Not that I remember, no. If it had of been, I wouldn't have had the top down on the car, that's for sure.

Q. You had the top down? A. Yes, sir.

Q. And you watched this group of men just across the street from you? A. Yes, sir, I sure did.

238 Q. As they left headed toward Newcomb—that is sort of southwest of Jellico, isn't it? A. Southwest? Let's see. No, it wouldn't be southwest, would it? Southeast, wouldn't it?

239 Q. All right, southeast. You followed them out? A. Yes, sir.

Q. Went right behind them? A. Yes, sir.

Q. Watched them all the way? A. Yes, sir.

Q. And you went in there and you followed them into the Boots and Cox— A. Yes, sir.

Q. And you milled around and saw them? A. No, I didn't mill around, I stayed in the car and watched them. I wasn't about to get down there and let somebody get hold of me.

Q. You and your friends were there in this convertible with the top down? A. Yes, sir.

Q. Watching what was going on? A. Yes, sir.,

Mr. Rayson: Nothing further.

RE DIRECT EXAMINATION

By Mr. Robertson:

Q. One further question, Mr. Wender. You said that this Mr. Smith was directing traffic there in Newcomb, some turned in the Boots and Cox pit, and he directed others toward Elk Valley. A. Yes, sir, he certainly did.

240 Q. Is that out toward Pioneer? A. Elk Valley, you turn left at Elk Valley to go to Elk Valley from Newcomb, and you turn right to go to Alonzo Cox's pit.

Q. What I mean is Elk Valley out toward Pioneer? A. Let me see where Pioneer is.

Testimony of Alonzo Cox

Q. Do you know whether or not it is? A. Pioneer. You can go across from Elk Valley Mountain and go into Oneida. Yes, it's towards Pioneer, yes.

• Mr. Robertson: That's all. Call Mr. Alonzo Cox.

ALONZO COX

a witness called by and in behalf of the defendants, having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. Templeton:

Q. Are you Mr. Alonzo Cox? A. Yes, sir.

Q. Where do you live, Mr. Cox? A. Jellico.

Q. Where did you live in April of 1955 and before? A. Jellico.

Q. How long have you lived in Jellico? A. I moved
241 to Jellico in '44, 1944.

Q. Where did you move from? A. Sir?

Q. Where did you live before you lived in Jellico? A. Elk Valley, Tennessee.

Q. How far is that from Jellico? A. Approximately twelve miles.

Q. Are you a native of that section? A. Sir?

Q. Are you a native, were you born in Elk Valley? A. Born and raised in Elk Valley.

Q. What business are you in, Mr. Cox? A. I'm sorry to tell you, I have got a cold and my head is stopped up. You will have to talk a little louder.

Q. What is your business? A. Coal mining, stripping business.

Q. How long have you been in the coal stripping business?
A. Ten years.

Q. Were you in that business in April, 1955? A. Yes, sir.

Q. Where was your operation? A. It is at Newcomb, Tennessee, about five miles south of Jellico.

Q. Were your employees members of any labor
242 organization prior to April, 1955? A. Would you repeat that again, please?

Testimony of Alonzo Cox

Q. Did you operate a union mine prior to April, 1955? A. No, I wasn't union at that time.

Q. Sir? A. I was not union at that time.

Q. Have you ever been a union mine? A. Before, yeah.

Q. How long before? A. Well, we had been out about ninety days, or four months before this happened.

Q. You mean before April, 1955? A. Yeah.

Q. If I understand you, some ninety days—you had belonged to the union, but for ninety days before April, you had not? A. That's right.

Q. What union did you belong to? A. UMW, United Mine Workers.

Q. Had you been approached by any person or official from the United Mine Workers Union prior to April, 1955, regarding re-establishing your membership? A. Yes, sir, they was on my job.

Q. Who approached you? A. Mr. Ed Daniel.

243 Q. You knew Mr. Daniel? A. Yes, sir.

Q. You knew what he did? A. Yes, sir.

Q. How long had you known him? A. Well, I had knowed Mr. Daniel practically—well, ever since I moved to Jellico, ever since I've been in Jellico.

Q. What did you do with reference to his approach about joining the union? A. Well, I told Mr. Daniel that—

Mr. Kramer: I think maybe we ought to clarify this Your Honor, if I may. I don't know whether you are talking about this man personally joining the union or signing a collective bargaining agreement. You are asking him if they approached him about joining the union, which may make a difference on my objection.

Mr. Templeton: I will clarify that, Mr. Kramer, if I can. By Mr. Templeton:

Q. What did Mr. Daniel want you to do, if anything, when he approached you? A. Mr. Daniel wanted me to sign up with the United Mine Workers.

244 Q. You personally or for your company? A. Me and my company. I had a partner.

Testimony of Alonzo Cox

Q. Your business? A. My business, my operation.

Q. Did he want you to sign up for your employees? A. For my employees.

Q. And what was your response to that? A. I told Mr. Daniel that there was a few operating around in this area that was operating un-union, and I said, "You get the rest of the boys to sign up, and I'll go along with you on it." I said, "It's not right for me to sign up and let the others go along and work un-union."

Q. What was the result of that? Did you sign up then or not? A. No, I did not sign up then.

Q. What happened after that, Mr. Cox? A. Well, they went on off, and never did come back any more until this trouble happened over there at that time.

Q. And how long was that after the visit of Mr. Daniel to your mine? A. Something like sixty days.

Q. Well, now, tell the jury and the Court what took place at the time that you are talking about them coming back and when was it, if you know? A. Well, this group of men
245 come in on me about—it was April the 6th of 1955—

Mr. Kramer: Now, Your Honor, for the reasons heretofore given, we object to this testimony which is evident will be along the same line, without repeating the basis of my objection.

The Court: Overruled.

By Mr. Templeton:

Q. Just go ahead, Mr. Cox, and state what took place there then when they came in on you as briefly as you can. A. April 6, along about ten or eleven o'clock in the morning, they came in there, something like—well, I would say something near three hundred men, I would judge. They asked me what I was doing up there working un-union, and I said, "Well, I'm trying to make a living."

Q. Asked you what, Mr. Cox? A. Asked me what I was doing up there operating an un-union mine, and I said, "I'm trying to make a living." Then they went to beating on me,

Testimony of Alonzo Cox

knocking me over the high wall, kicked me in the back, done beat my partner up.

Q. Did they leave then? A. They left shortly afterwards.

Q. Now, Mr. Cox, as a result of a subsequent event, what did you do with reference to signing a union contract
246 or not—

Mr. Kramer: I object to the form of the question. Of course if the first clause is omitted, I do not, but as a result, I object to the conclusion. If he is asking if he later signed a collective bargaining agreement, I do not object.

Mr. Templeton: That is all I want to know, Your Honor.

The Court: Well, you want to reframe your question?

Mr. Templeton: Yes, Your Honor, I will reframe the question.

By Mr. Templeton:

Q. Did you or not subsequently sign a union contract? A. Me and my partner did, about sixty days after the trouble.

Q. About sixty days after? A. Something like that, about six weeks or two months after it happened.

Q. Who did you sign the contract with representing the United Mine Workers, if that is who it was? A. Mr. Ed Daniel and Taylor Maddox.

Q. Did you then resume operation of your mine,
247 Mr. Cox? A. In a few days after we signed up with them, we went back to work.

Q. Did you have any more trouble? A. No, we did not.

Q. Have you had any trouble since? A. No, we haven't.

Q. Are you still operating a union mine? A. We are.

Q. Did you operate it last year? A. Yeah.

Q. What was the financial result of your last year's operation?

Mr. Kramer: Just a moment, Your Honor, we object to that, don't see how in the world that could be competent in this case.

The Court: Well, what theory did you say—what he did, he's not a party to this suit.

Mr. Templeton: All right, Your Honor. We don't insist.

Testimony of Alonzo Cox

I can think maybe of some reasons, but I don't insist on it.

The Court: Well, then it is not necessary for the Court to rule.

CROSS EXAMINATION

By Mr. Kramer:

Q. Mr. Cox, where is the mine located that you are
248 now operating? A. Now operating?

Q. Yes, sir. A. It is above Elk Valley, Tennessee, what they call Lick Fork.

Q. And about how far from Jellico? Well, the operating will be about fourteen miles, approximately.

Q. Is it a truck mine? A. Yes, sir.

Q. In other words, you don't load directly from your mine on the rail cars? A. Yeah, we load on the railroad cars.

Q. But do you haul it to the ramp some distance away?
A. We haul it by truck.

Q. How far? A. About a seven-mile haul.

Q. That is what I thought. In other words, your mine is located about seven miles from the rails, and you load from the truck? A. That's right.

Q. And you have the truckers? You hire the truckers? A. I hire the truckers.

249 Q. And how many men do you employ in your mine? A. There's thirteen on the payroll.

Q. Is that about your average? A. That's about the average.

Q. What we call a small mine? A. That's right.

Q. And you have continued to operate that small mine now for how many years? A. Well, I am going to try to operate it until I work out.

Q. I know. We are all going to try to. I am going to try to practice law until I work out, too, but I mean how long have you been operating that mine— A. I've been on this particular job six minths.

Q. Now prior to the time you came to this location, where you are operating that mine with thirteen employees, you

Testimony of Alonzo Cox

operated somewhere else for about three years?

A. That's right, different places.

Q. Where did you operate that mine for three years? A. For three years?

Q. Yes. A. Well, I haven't been on one particular job for three years.

Q. Well, would you just tell us about, so His Honor and the jury will understand, where you have operated
250 since this trouble, the different places you have operated the mine.

Mr. Rowntree: Please, may I inquire the reason for this line of questioning? The Court: Yes, sir.

Mr. Kramer: The purpose of this, Your Honor, is to show a response to the assertion made by the cross-plaintiff that the effort was being made to force the small mines out of business, and they were forced out of business. This gentleman has already testified that he's operated six months with a thirteen-man mine, which is a small mine, and I intend to show that from the time of that trouble, the small mines were not forced out of business, which is one of the issues in this lawsuit.

The Court: All right.

By Mr. Kramer:

Q. Would you tell us where else you have operated? A. I have operated in Whitley County, which is just across the state line from Jellico.

Q. Just across the state line. When did you operate that mine? A. '59.

Q. And about how many men did you have employed? A. About the same thing.

251 Q. And you marketed that coal by trucking it to the railroad? A. That's right.

Q. Now where else have you operated a small mine during this period of time? A. On Hickory Creek and Stinking Creek. That's in Tennessee.

Q. Don't mean as much to us as they do to you. How close is that to Jellico? A. That was twenty-one miles.

Testimony of Alonzo Cox

Q. And where did you truck that coal to? A. Trucked it to Jellico.

Q. Trucked it twenty-one miles to Jellico and employed about the same number of men there? A. About the same number.

Q. Were you operating individually or as a partnership at that place? A. Partnership.

252 Q. You all partners? A. No, not at this time, a partner—I bought my partner out. After I bought him out in 1957.

Q. Okeh. Have you operated anywheres else—before I leave that. Why did you cease operating there? Did you mine the coal all out? A. Mined it all out.

Q. Usually happens, run out of coal, exhaust the supply of coal from that opening? A. That's right.

Q. Were you strip mining or deep mining? A. Strip mining.

Q. And you were just digging on the surface of the earth? A. Yes.

Q. A little mine there. A. Yes.

Q. And after having mined that for how long— A. That one particular place?

Q. Up Stinking Creek, whatever that other creek was.

A. You mean how long I were in there? Q. Yes, Sir.

The Court: What is the name of that creek?

The Witness: Stinking Creek.

253 The Court: That is not in Tennessee, is it?

The Witness: That is in Tennessee.

Mr. Kramer: They have some over in Kentucky too.

The Witness: That is what I always heard it called.

By Mr. Kramer:

Q. How long, approximately, did you mine there? A. I was there about 14 months.

Q. And you got all the coal out you could from that location? A. That's right.

Q. And then what did you do? A. I moved onto the job I am on now.

Testimony of Alonzo Cox

Q. And you are operating there, and how long do you think you have a supply of coal—you cannot judge accurately of course, but judging from your experience—for stripping operations at that location? A. Well, I have got about 8,000 acres to strip over. I don't know how many years it will take for me to strip it.

Q. Have your employees been with you, the same employees in the main, most of these years? A. Yes, practically all of them have been with me.

254 Q. Stay on year after year with you? A. That's right.

Mr. Kramer: That is all.

Mr. Templeton: If your Honor please, in view of counsel's questions regarding the success of the business, I think our question is now, with regard to the financial success or failure of it, are proper.

The Court: No. I do not think the financial success would have any bearing on the issues in this case. But I will let you go into the matters Mr. Kramer has gone into. But I won't let you go into his financial part. If he were suing that would be a different matter.

Mr. Templeton: All right. Note our exception. Just a minute.

Mr. Rowntree: If your Honor please, as I recall counsel's response to our inquiry, he was developing this in response to our contention that a small mine could not operate, and we think it is pertinent whether this man was making money or starting to lose money, or what.

The Court: Now the Court ruled on the details of his finances. If you want to ask a general question, just one

255 I will not let you bring in the figures and go into the details because that would require another trial about his alleged—

Mr. Rowntree: Ask two questions, general questions.

The Court: Yes, you can ask one general question on that and—

Testimony of Alonzo Cox

Mr. Kramer: Now, your Honor, we object to— I don't know just what these general questions are to be on but we object to them because there are many factors involved here whether or not this man makes a profit or not and that is not material to this lawsuit.

The Court: In the light of your cross examination, I will let him ask the question whether he is or is not making money or losing money. He cannot go into the details.

What was the other question? Is that all?

Mr. Templeton: That one question, your Honor, and the other question was whether or not Mr. Cox had paid the 40 cents a ton royalty.

Mr. Kramer: Your Honor, whether he has or hasn't under the law as it is now, under the facts as they are, he is obligated to pay it under the union agreement.

256 That agreement is in, considered in, because it is referred to in the introduction of testimony by the trustees and therefore, your Honor, it is immaterial.

The Court: I will let you ask those two questions.

Mr. Templeton: All right, your Honor.

The Court: The objection is overruled. Go ahead in the light of the cross examination.

REDIRECT EXAMINATION

By Mr. Templeton:

Q. Mr. Cox, during the periods that Mr. Kramer asked you about since this occurrence in 1955, have you made or lost money in the operation of your coal mine? A. Well, last year I did not make any money. I just barely existed.

Q. Have you been able to pay, or have you paid, the 40 cents a ton royalty welfare? A. I haven't the last twelve months.

Q. Have not? A. I have not.

Mr. Templeton: You may ask him.

Mr. Kramer: Subject to our exceptions and without waiving them, your Honor, I desire to ask a couple of questions.

The Court: You may do so.

Testimony of John Van Huss

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RECROSS EXAMINATION**By Mr. Kramer:**

Q. Mr. Cox, sometimes and at some of these mines during this period since 1955, you have made money, at other times you haven't; that is true, isn't it? **A.** That's right.

Q. And sometimes you have kept up on the payment of royalties, sometimes you have dropped behind and caught up, and sometimes you haven't caught up; isn't that correct? **A.** Yes.

Q. And at the moment you are behind because you did not pay last year's royalty. **A.** The royalty was kept up until this 12 months.

Q. Then it was kept up all this period until the last 12 months and you haven't kept it up then? **A.** That's right.

Mr. Kramer: That is all.

Mr. Templeton: Stand aside. Call John Van Huss.

JOHN VAN HUSS

called as a witness by and on behalf of the defendants, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION**By Mr. Templeton:**

Q. You are Mr. John Van Huss? **A.** Yes, sir, I am.

Q. Where do you live, Mr. Van Huss? **A.** I live at LaFollette, Tennessee.

Q. How long have you lived there? **A.** Well, since October 1933.

Q. What is your business? **A.** I am a coal mine operator.

Q. How long have you been a coal mine operator? **A.** About eight years—8 or 9 years.

259 **Q.** Were you a coal mine operator in April, 1955? **A.** Yes, sir, I was.

Q. And before that time? **A.** Yes, sir, before that a few years. **Q.** What type mine did you operate, Mr. Van Huss? **A.** It was an underground mine, small mine.

Testimony of John Van Huss

Q. How many men did you work? A. Well, it was 8 or 10, I believe, back then.

Q. Did you have a mechanized mine? Just what type mine did you have with reference to how you got the coal from the inside out to the surface of the ground? A. Well, we pulled it outside with two ponies at that time.

Q. You did not have a mechanized mine then? A. No. Well, we cut the coal and that was all. We cut coal with a machine and loaded it on a conveyor and pulled it outside with ponies.

Q. Mr. Van Huss, did you require that the employees belong to a union or not?

A. They did not belong to the union as far as I knew anything about it.

Q. Had you ever been approached by any person representing any union with regard to your men joining a union?

A. Yes, sir.

260 Q. Who? A. Ed Daniel.

Q. Did you know Mr. Daniel? A. Yes, I knew him.

Q. Did you know who he worked for? A. I did.

Q. Who did he work for? A. He worked for the United Mine Workers.

Q. And that was his purpose in approaching you—

The Court: Mr. Kramer, in order to avoid going over Mr. Daniel's position from time to time, can it be stipulated at this time the position held by Mr. Daniel?

Mr. Kramer: Yes, your Honor. Mr. Daniel was a field representatives of District 19 of the United Mine Workers of America.

The Court: During the period—

Mr. Kramer: During the period involved in this litigation so long as we understand the years we have been talking about.

The Court: It will not be necessary to go into this position any more.

Mr. Kramer: Correct, your Honor.

Mr. Combs: One question, your Honor, while we are in—

Testimony of John Van Huss

interrupted. He is asking the witness whether or not
261 this Ed Daniel approached and talked to him about
the men belonging to the union.

I think counsel again is talking about whether or not he
signed a contract and there is a difference on that, and I
don't think counsel is intentionally doing that.

I don't think Mr. Daniel discussed with him whether his
employees did or did not belong to the union as I understand
his line of questioning. I don't know, but that is what he
is asking about, whether he joined the union or not. The
same thing we had a while ago.

The Court: Will you be explicit on that, Mr. Templeton.

Mr. Templeton: All right, your Honor.

By Mr. Templeton:

Q. Just say what Mr. Daniel approached you about then;
Mr. Van Huss; what did he want? A. He approached me
about my signing a contract. For your business or per-
sonally? A. Well, for the mine.

Q. For the mines. A. Yes, sir.

Q. Did you sign? A. No, sir, I did not.

262 Q. Did you continue to operate? A. Yes, sir.

Q. Now then, Mr. Van Huss, did anything out of
the ordinary take place at your mine on April 6th, or April
11th, or in the month of April, 1955?

Mr. Kramer: Wait a minute. The same objection, your
Honor, we made before and for the reasons heretofore
stated.

The Court: Same ruling.

Q. Go ahead. A. Yes, sir. I came out of the mines. There
was a—it was in the afternoon and there was a bunch of
men outside, and, well, they beat me up severely and—

Q. Did you know any of them, Mr. Van Huss? A. Yes, sir,
I did.

Q. Who did you know? A. Well, I knew Tom Taylor and
Dave Lowe and Lawrence Rutherford and Chris Walden.

The Court: Taylor, Who else? Tom Taylor?

The Witness: Tom Taylor and Dave Lowe.

Testimony of John Van Huss

The Court: Who else?

The Witness: And Chris Walden.

The Court: W-a-l-d-e-n?

The Witness: Yes, sir. W-a-l-d-e-n.

263 By Mr. Templeton:

Q. Are those the only ones you knew, Mr. Van Huss? A. Yes, sir.

Q. How many men were there besides those three? A. Well, there was possibly a hundred.

Q. A hundred besides those three? A. Roughly a hundred.

Q. Did they say anything to you? A. Yes, sir. Oh, yes, they talked to me.

Q. What did they say? A. Well, they cursed me, and Dave Lowe is the one that stood over me with a pistol and questioned me about the men in the mine—how many were in the mine, and dared me to lie to him about how many men were in the mines, and he said that “You wouldn’t listen to Daniel, that he was just one man.”

Q. Said you wouldn’t listen to Daniel? A. That’s right.

Mr. Kramer: Of course, your Honor, we are objecting to what some individual said, not an official of even a local union, the union would not be bound by those statements.

The Court: Unless it is connected up the union would not be bound. That is a matter for the jury to say whether the union was or was not connected with the matter.

264 Mr. Kramer: May I make my position just a little clearer, your Honor?

The Court: Yes.

Mr. Kramer: I think under the law, even though he be a member of the union, this testimony would not be chargeable merely because he was a member of the union unless he is an officer of the district of a union.

The Court: You would not be bound unless the organizers of the union were there for organizational purposes and unless they ratified, or these men did, or unless they encouraged them to do it, inciting them to; if so, the union

Testimony of John Van Huss

would be bound. Go ahead.

265 By Mr. Templeton:

Q. Do you know where Mr. Tom Taylor was from? You said you knew him. A. Well, he is from Westburn.

Q. From Westburn? A. Yes.

Q. Do you know where Dave Lowe lived? A. Well, I found out since then that he lived at Westburn.

Q. In Westburn? A. After the trouble.

Q. Did you prosecute these men, Mr. Van Huss? A. Yes, sir.

Q. In the criminal court at Jacksboro? A. I did.

Q. Do you know what attorneys represented them in that trial, if any?

Mr. Kramer: Now, your Honor, we object to that. That is wholly irrelevant and immaterial.

The Court: Overruled.

By Mr. Templeton:

Q. Do you know who represented the defendants? A. Yes, sir, it was Mr. Kramer and Mr. Ryson or Bryson.

Mr. Kramer: Rayson.

266 The Witness: Rayson. I am sorry. And Roy Asbury.

By Mr. Templeton:

Q. Roy Asbury, he is a lawyer at Jacksboro? A. He is at Lafollette.

Q. What was the result of that prosecution?

Mr. Kramer: Now, your Honor—

The Court: I sustain that.

Mr. Taylor: All right.

The Court: I think your action indicated you were going to object. Am I mistaken about that?

Mr. Kramer: Well, I will just withdraw the objection and let him show.

The Court: All right, he withdraws the objection.

By Mr. Templeton:

Q. What happened to your trial? A. Well, the verdict was

not guilty.

Mr. Kramer: Just evidence that he had good lawyers, your Honor.

Mr. Taylor: You may ask him.

Mr. Kramer: May we have just a moment, please, your Honor?

The Court: Yes, sir.

CROSS EXAMINATION

267 By Mr. Kramer:

Q. Mr. Van Huss, when was it that Mr. Ed Daniel talked to you about signing a collective bargaining agreement with the United Mine Workers of America with reference to the difficulty that occurred at your mine in April, I guess it was, 1955? A. Well, it was some several months before it.

Q. As a matter of fact, wasn't it about two or two and a half years before? A. Well, just to be safe, I will say several months.

Q. Several months? A. Yes.

Q. You don't recall what our previous testimony was on that? A. No, I don't remember.

Q. But you do now—you will say it was at least several months before that difficulty? A. Yes.

Q. By the way, Mr. Van Huss, are you operating a mine now? A. Yes, sir.

A. Oh, you are. Where is that mine? A. Well, it's where I had the trouble in '55, the same mine.

Q. The same mine? A. Yes, sir.

268 Q. I take it it is not mechanized, is it? A. Well, the only difference is, we are pulling the coal with a locomotive now rather than the ponies.

Q. It is what we call a deep mine, isn't it? A. Yes, sir.

Q. And you do have a cutting machine? The coal is not dug out of the coal seam or vein by picks any more, is it? You have a cutting machine? A. Yes, sir, we use a cutting machine.

Testimony of John Van Huss

Q. You have a cutting machine, so it is mechanized to that extent. How do you get the coal from back in the mine to the surface? A. Well, the principal tonnage is loaded on a conveyor by hand.

Q. Yes. A. And it is conveyed to the entry and where it is put in cars on track.

Q. Now most of us do not understand the mine work as well as you do. When you say loaded on a conveyor, would you explain to these ladies and gentlemen what you mean by a conveyor? A. A conveyor, it is a device for transferring material. Of course, there is different types.

Q. Let's use the type you have. A. Well, the type I use principally is a shaking conveyor and it is a metal
269 chute that conveys the coal by shaking. And the coal is put on this conveyor by hand and this coal, it is transferred to the entry—that is the haulage way for the cars, and it is put in the cars on the haulage way.

Q. About how far does this piece of equipment you call a conveyor that operates by vibration, sort of, isn't it? A. Yes.

Q. Like my hand is shaking, and as it shakes, it comes toward the surface? A. Yes.

Q. As that coal comes out from where your cutting machine is operating, say now or has been for the last few weeks or months, how far are you in the ground? A. You mean with the conveyor?

Q. Yes. A. The conveyor, it conveys the coal—well, 300 feet is a pretty good distance. Then we move it up.

Q. Now when you move it up, you mean move it further back into the ground? A. Yes, we move it farther in the mines and we extend the track up to it.

Q. And you extend the track up to it? A. Yes.

270 Q. So even the deeper you go in the mine, you still do not man handle it, it is moved by equipment to get it into the trucks? A. Into the cars, yes, sir.

Q. And then how are the cars operated to the surface? A. Well, we pull them with a locomotive.

Testimony of John Van Huss

Q. You have a steam locomotive? A. No, sir, it is electric.

Q. You have an electric locomotive? A. Yes, sir, it goes in the mine.

Q. So you use the electric locomotive to put it out to the surface? A. Yes, sir.

Q. When you get it to the surface, what disposition do you make of your coal? A. We dump it by hand into the coal chute.

Q. Now how many men do you work in your mine? A. You mean now?

Q. Yes. A. Well, there will be about, roughly from 60 to 65.

Q. And you are operating with 60 to 65 men? A. Yes, sir.

Q. You are not operating under any collective bargaining agreement with the United Mine Workers, are you?

271 A. No, sir.

Q. How long have you operated and you used 60 to 65 men? Before I get to that, would that be about the average number you have used over the last three or four years? A. No, sir.

Q. Tell us about the progress you have made in the number of men you have used. Has it been up or down? A. Well—

Q. You don't need to be exact. Just give us an approximate number. A. Well, let's see. You mean since '55?

Q. Yes. I mean since you had the little difficulty up there. A. Well, I would say that the increase has been fairly steady and, however, in 1960 I worked two shifts continuously in 1960 and part of the time a third shift.

Q. When you operate two shifts, do you operate on eight hour shifts? A. Yes, sir.

Q. So with this non-union mine you operated in 1960 on two shifts of about 30 men on a shift? A. No, sir. Well, it would be about 20 men.

Q. Twenty men on a shift, and you operated—when you operated on three shifts, that would be around the clock? A. Yes, sir.

Testimony of John Van Huss

Q. How many days a week did you operate? A. In
272 1960?

Q. Yes, when you were operating three shifts. A. Well, we would operate—well, let's see, we were down some along in the spring of the year. Well, when the season is good, we have been working six days.

Q. You worked a six day week, three shifts a day, 20 men to the shift. Am I about right or am I wrong? A. Well, that is about right.

Q. That is about right. You have already testified, I believe this morning, that you didn't recall how long it was prior to the time of this difficulty in April of 1955 that you talked to Mr. Daniel. I want to read a question and answer which I think comes from your previous testimony. It does come from your previous testimony. And see if it refreshes your recollection. The question was asked Mr. Van Huss, "Had Daniel talked to you before?" And you answered, "Yes, sir."

"How long prior to this?"

"Well, roughly close to two years. Never since."

No. "Roughly close to two years."

Does that refresh your recollection any?

A. Well, how long would several months mean? I am trying to tell the truth, you know. I don't want to say several years.

273 Q. You still won't say—of course, when you testified before it was much closer to the time of the occurrence than it is now because this testimony was three or four years ago and, of course, your recollection was better. You don't recall now whether it was two years or several months, but you do know it is several months?

A. I would rather say several months to be—

Q. By the way, when he did approach you, was that at the same mine?

A. No, sir, it was just across the holler.

Testimony of Raymond E. Phillips

Q. You had moved to a new location?

A. Yes, sir.

(Witness excused.)

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RAYMOND E. PHILLIPS

a witness called by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Rowntree:

Q. What is your name, sir? A. Raymond E. Phillips.

Q. You are a defendant and cross-claimant in this case?

A. Yes, sir.

Q. Where do you reside, Mr. Phillips? A. I live at Helenwood, Tennessee.

Q. Where is that near? A. That is about seven miles south of Oneida.

Q. In Scott County? A. Scott County.

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Q. Are you a native of that section? A. Yes, sir.

Q. What did you do for employment before World War II? A. Well, I worked as a machinist and mechanic.

Q. Did you spend all that time over at Scott County? A. No, sir, I worked in Indiana and I worked in Tennessee and I worked in Pennsylvania.

Q. What did you do in Pennsylvania? A. Well, I worked for the Baldwin Locomotive Works.

Q. Were you a member of a union there? A. Yes, sir.

Q. Did you attend night school up there? A. I did.

Q. What kind of school? A. Diesel engineering.

Q. When World War II came along, what happened to you? A. Well, I was drafted in the service.

Q. Air Force? A. Yes, sir.

Q. Were you in mechanical work in the Air Force? A. Well, they first sent me to school to be an airplane technician, which is a mechanic and flight engineer.

Testimony of Raymond E. Phillips

Q. Did you become a flight engineer? A. I did.

276 Q. Did you later become a line chief? A. Yes, sir.

Q. What is that job? A. Well, it is actually a master mechanic which has a crew chief and a flight chief under you. My job was to take charge of the flight of aircraft, keep them in flying condition.

Q. How many aircraft did you have on the line that you had charge of? A. I had 86.

Mr. Kramer: I object to this. I don't see that it is prejudicial, except that it is immaterial. We are taking up time, building up the record. If it has materiality, counsel can show it.

Mr. Rowntree: We will go on.

By Mr. Rowntree:

Q. What did you do after the war? A. Well, I came back to Tennessee and started a used car business, garage business.

Q. Just tell briefly what you did from there up until the time you got in the coal business? A. Well, chiefly in garage business. I was servicing, oh, diesel equipment was kind of new in our part of the country and I was about the only one that knew anything about diesels. I was more of a

277 diesel serviceman as well as an automobile mechanic.

Until we got into the coal business. Q. Did you have a garage over in Scott County? A. We did.

Q. Did you do mechanical work there? A. Yes, sir.

Q. Is that where you had your trouble with your eye? A. Yes, sir.

Q. Was that an accident that occurred in the garage there? A. It did.

Q. Now when did you start in the coal mining business? A. I am not sure of the date, without going and digging out some old records, but I believe it was 1950, to the best of my knowledge.

Q. And who did you start in business with? A. Me and my brother.

Q. What is his name? A. His name was Burse Phillips.

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Q. And the two of you organized the partnership in or about 1950? A. We did.

Q. What kind of coal mining did you do? A. Strip mining.

Q. Whereabouts? A. We started in Scott County,
278 a little place called Glen Mary, Tennessee.

Q. And how much did you and your brother invest in this coal mining business? A. Well, we had invested eighteen thousand dollars.

Q. In 1953, did you organize this partnership between you and Burse and James Pennington? A. We did.

Q. What did you do with the equipment that you had in the previous operation? A. Well, some we traded in for better equipment, and some we still used in the new operation.

Q. Did Mr. Pennington make a contribution to the capital? A. He did.

Q. How much? A. Nine thousand dollars.

The Court: How much?

The Witness: Nine thousand.

By Mr. Rowntree:

Q. Is your brother Burse living or has he died? A. He died last July.

Q. Now this nine thousand dollars of James Pennington, how did you arrive at that figure for him? A. Well,
279 we figured up what we had in our equipment that my brother and I had purchased, and it come to eighteen thousand dollars, so we figured to make him an equal partner, why he would have to put in as much as we had in it.

Q. And did you all employ some additional employees after you started up this partnership? A. The three of us?

Q. Yes. A. Well, in a short time after we formed this partnership, why we had around seven, eight employees. I wouldn't know exact without going back and checking the old records.

Q. You worked up over a period of time? A. We did.

Q. Several months? A. Yes, sir.

Q. Now where did you operate this new partnership? A.

Testimony of Raymond E. Phillips

Well, it's a little place called Pioneer, Tennessee, in Campbell County.

Q. I believe that is on the map over here of Campbell County. You have seen that map, Exhibit One? A. Yes, sir.

Q. And you started there in 1953? A. In July of '53.

280 Q. July of '53? A. Yes, sir.

Q. Did you have a railroad tippie? A. We had a railroad crushing plant and a loading point.

Q. You could load on the railroad cars at this crushing plant? A. That's right.

Q. Was that on a siding of the Southern Railroad? A. It was.

Q. How far from Pioneer? A. Oh, I imagine—oh, a mile and a half or two miles.

Q. And did you have a separation plant? A. We did, separating tippie.

Q. What kind of tippie would that be? A. Well, it's where you would put your coal in that's run of mine, and separate the block and egg and steam, make three grades of coal.

Q. Now, how did you transport the coal from the stripping pit to the respective loading points or tipples? A. By truck.

Q. Did you own the trucks? A. No, sir, we did not.

Q. Did you lease trucks, or how did you engage the
281 trucks? A. We hired the trucks and paid them so much a ton to haul the coal from the pit to the tippie, or to the loading point whichever—wherever we wanted to load it at that particular time.

Q. Then approximately how many trucks did you require in normal operation? A. Well, anywhere from six to ten, the days that we would operate.

Q. Now when you started up there at Pioneer with this new partnership, did Mr. Daniel come to see you all? A. He did.

Q. Did you see him yourself there at the mine? A. No, sir, I did not. My brother told me that he had visited him on the mountain.

Testimony of Raymond E. Phillips

Mr. Kramer: Of course, Your Honor, that would be objectionable as hearsay.

The Court: Yes, that would not be competent, that would be hearsay.

By Mr. Rowntree:

Q. Well, for some reason, did you and your partners discuss the signing of a collective bargaining agreement with the United Mine Workers? A. We did.

Q. What was the reason for that discussion?

282 Mr. Rowntree: May I ask that, Your Honor?

The Court: Yes.

The Witness: We had heard rumors and had been reading the paper—

Mr. Kramer: Just a moment, Your Honor. We object. I thought you meant discussed it with a representative of the UMW. He's talking about discussing it among the partners themselves. We object to that as being hearsay and incompetent.

Mr. Rowntree: My question is, did they discuss this among themselves.

The Court: I think they can state the reason, but what they said would be hearsay testimony, and is not substantive proof of the truth of what was said, but it may go in the record of this union question that appears to be involved in the lawsuit. Go ahead.

The Witness: Well, the discussion between the three of us was we had been notified that we had moved into Campbell County—

Mr. Kramer: Of course, if Your Honor has ruled it is competent, I don't want to keep objecting, but he said they had been notified, and that would be hearsay.

The Court: The Court rules that that would not be substantive evidence to prove the fact they were notified, but it is competent as bearing on the question
283 of what this partnership did, if anything, as a result of such alleged information.

Testimony of Raymond E. Phillips

Mr. Kramer: And Your Honor, I take it, intends also to limit it that it would not be competent evidence of the facts or claimed facts of which they were informed?

The Court: I have so ruled twice. It is not substantive evidence to prove what they heard was the truth. In other words, it would come within the hearsay rule and would not be competent, but it is competent as bearing on the question of what was done by this partnership, if anything, in relation to the UMW.

By Mr. Rowntree:

Q. Go ahead, Mr. Phillips. A. Well, we was very much worried about the United Mine Workers due to the fact that they was making a drive through Kentucky about that time for—a membership drive—and we was afraid that they was going to make a drive through our county. In fact, that was the rumors that we had gotten.

Q. Did you discuss this with anybody else? Don't say what was said, did you discuss it? A. Yes, we did. I did. I discussed it with my father-in-law, who was an active
284 member of the United Mine Workers.

Q. Did you—what did you decide to do? A. We decided we would either have to quit or join the union, and we couldn't quit because we had all of our money invested, so we decided we would have to join the union.

Q. Did you sign a contract? A. Signed a contract, yes, sir.

Q. Did you have a meeting with Mr. Daniel subsequent to that? A. We did.

Q. Where did this occur? A. It occurred at Caryville, Tennessee, by the side of the lake under a tree.

Q. And what was the substance of that conversation? A. Mr. Daniel told Mr. Pennington and myself that he had let us move into Campbell County—

Mr. Kramer: Before we hear this, Your Honor, I was asking counsel a question.

By Mr. Rowntree:

Q. Fix the approximate time of this meeting at Caryville.

A. It was in the morning; before noon—

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The Court: He wants to know about the month and
285 the year.

By Mr. Rowntree:

Q. What date, as near as you can give it. A. I believe it was sometime in August of 1953.

Q. And give the substance, generally what was said at this meeting. A. Well, the substance was that he told us that he had let us move into Campbell County and get set up, and now it was time we had to join the union and sign a contract, so I explained to him that we was just a new company starting out, and I didn't think that we could pay the scale labor, whatever it was, or the forty cents a ton to the welfare fund, and operate. Mr. Daniel told us if we would sign a contract that we could work out our own working arrangements with our employees and pay whatever we could to the welfare fund, and he would take care of us.

Q. Did you all go back and talk to Burse after that? A. I told Mr. Daniel that we couldn't tell him anything definite that day, because we would have to talk to our other partner, and we would let him know.

Q. And did you talk to Burse later on? A. We did.

Q. What did you all decide to do? A. We decided, under those conditions, we would sign the contract.

286 Q. And did you yourself sign it? A. No, sir, I did not.

Q. Did Mr. Pennington sign it? A. Mr. Pennington did.

Q. Were you present? A. No, sir, I was not.

Q. Did Mr. Daniel make any statement to you that the union represented the majority of the employees of your company? A. He did not.

Q. Did any employee of your company speak to you with respect to your signing a United Mine Workers contract? A. They did not.

Q. Do you know of your own knowledge that any employee you had was a member of the union? A. To my knowledge, there wasn't any that belonged to the union.

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Q. Now in April of 1955, before that, did you make any change in your wage scale after signing the contract? A. No, we did not.

Q. Did you talk to your men about signing the contract?

A. We did not.

Q. Did you make any payments on the welfare fund? A. We did.

287 Q. How many payments did you make? A. I really don't remember without going back to the records.

Mr. Rowntree: I believe, Your Honor, that is included in the stipulation.

The Court: Yes.

Mr. Kramer: It is, Your Honor. It is already in evidence. By Mr. Rowntree:

Q. What kind of wage scale were you paying? A. Well, on common labor, I mean hand labor, I believe we started out at a dollar an hour. Of course, the operators made more money.

Q. How much? A. I don't recall exactly. To the best of my knowledge, we was paying two dollars and a quarter for shovel operator.

Q. And what about a bull dozer operator? A. I think—I'm pretty sure we was paying bulldozer operators at that time, experienced bulldozer operator, two dollars an hour.

Q. Are all of the records with respect to the payments you made, they are in the records of the company? A. They are.

288 Q. Does opposing counsel have copies of all of those records? A. They should have, I think they have.

Q. Did you advance men in their wage scale from time to time? A. We did, as they would—if we had what we call a day laborer and he wanted to learn to run a piece of equipment, as he would learn to operate, we would advance his wage scale.

Q. And did you have several men who took advantage of

Testimony of Raymond M. Phillips

that? A. We did.

289 Q. What kind of men generally did you employ with respect to skill when they first came to your company? A. Well, be shovel operator or bulldozer operator.

Q. Did you employ any men without experience? A. As operators?

Q. No. As employees. A. Sometimes.

Q. And did several of those men become experienced operators? A. Yes, sir.

Q. State whether or not you asked a prospective new employee whether or not he was a member of the United Mine Workers? A. I did not.

Q. Now in April 1955, give us, briefly, what you know about what went on there from what you saw, from what you heard with respect to what was going on in the coal field.

Mr. Kramer: Your Honor, we are starting a new field and it is about mid-morning. Could we take the mid-morning recess?

The Court: Yes, sir. Take a recess.

(A short recess was had after which the following proceedings were had in the presence of the jury.)

By Mr. Rowntree:

290 Q. Mr. Phillips, looking at the records, company records you have in front of you to refresh your recollection as to who the employees of the company were in the first week of October, 1953—by way of explanation, your Honor, that is the time the contract was signed. A. October what date?

Q. I think that week ends October 3, 1955. A. Yes, sir.

Q. I mean '53. A. Yes, sir, I have it here. We had eight hourly employees.

Q. And who were they? A. Fred Burnett, Palmer Van Huss, Lawrence Dupee, Levy Harness, Floyd Buttram, Arlow Hutson—

Q. H-u-t-s-o-n? A. H-u-t-s-o-n. Richard A. Hutson.

Q. Same spelling? A. H-u-t-s-o-n. Ewell Phillips.

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Q. Now how many of those are still employed by the present corporation? A. Ewell Phillips, Richard A. Hutson.

Q. Is that all? A. That was all that was on the payroll in October of '53.

Q. Now with respect to Mr. Fred Burnett, and
291 there is another name that will be available for testifying here? A. Yes, sir.

Q. Who is that? A. That would be Ralph Phillips.

Q. Is he on the list, Ralph? A. I don't believe he came with us until a little later date. I can check on when he—

Q. Let me look at it A. There is something wrong. He signed up the same time they did.

Q. Mr. Fred Burnett will be available? A. He will be.

Q. Mr. Arlow Hutson, is he still employed? A. He is not.

Q. But he is available? A. He is available.

Q. Mr. Richard A. Hutson, is still employed? A. He is still there.

Q. Mr. Ewell Phillips still employed? A. He is still employed.

Q. All right. With respect to the other four did you know any of them over a long period of time? A. Lawrence Dupee had worked for me for several years.

Q. Do you know of your own knowledge whether he
292 was a member of the United Mine Workers at that time? A. To my knowledge he was not. He had never mentioned it or we had never talked about it.

Mr. Kramer: Just a moment. Your Honor, that "to my knowledge" is so indefinite. If he means "I do not know" that is one thing, but "to my knowledge he wasn't" may mean he is stating positively he was not a member. I think we are entitled to know what his answer is.

The Court: Yes. Can you tell them—can you be a little more plain with your answer, little more comprehensive?

The Witness: If they was a member of the United Mine Workers they never did tell me.

Mr. Kramer: Of course, hearsay testimony, whether they told him or not. It wouldn't be competent. But if he means

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"I do not know", and I take it that is what the witness means.

The Court: Is that what you mean?

The Witness: Yes, sir.

Mr. Kramer: All right.

By Mr. Rowntree:

Q. Did you have any reasonable cause to believe that they were members of the United Mine Workers? A. I did not.

Mr. Kramer: I think that is objectionable, "reasonable cause to believe" they were is not proof whether they were or were not, and I don't think that is competent for any purpose and I object to it.

The Court: I do not know the purpose of the question. What is the purpose?

Mr. Rowntree: We are getting into the applicability of these labor laws on the contract, and the—there is a case, I think I cited to your Honor, with respect to an employer signing a collective bargaining agreement without the majority of the employees being members or having authorized the union to deal for them, and it is in that area this proof bears upon.

The Court: Well, are you trying to find out from him whether these people were or were not members of the United Mine Workers?

Mr. Rowntree: I am trying to find out whether he had reasonable cause to believe that they were.

The Court: Well, he may answer if he can.

By Mr. Rowntree:

Q. Did you have any reason to believe that they were?

Mr. Kramer: Subject to our objection.

The Court: All right.

294 A. No.

Q. Will you look at your records there and refresh your recollection as to who were employees there in April, 1955? A. Had Fred Burnett, Richard A. Hutson, Willard Goad—

The Court: Who?

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The Witness: Willard Goad.

A. (Continuing) Lloyd Dale, Ewell Phillips, Arlow Hutson, Ralph Phillips.

Q. Is that all? A. That is all. That was my employees in April of 1955.

Q. Now in early 1955 did you have bad weather? A. We did.

Q. Did you close down operations? A. We closed down our hauling. Road conditions were so we couldn't haul.

Q. Then what did you do about the equipment, was it in use for some purpose? A. We stripped for, oh, quite a while during the winter months when the weather permitted. We uncovered coal.

Q. You uncovered coal? A. Yes.

Q. Did you load the coal? A. Not at that time; no,
295 sir.

Q. Beginning of April 1955, was that your situation with regard to your operation? A. That's right.

Q. What was the condition of the weather in early April? A. We was dressing off a road getting ready to haul.

Q. You heard the testimony of Mr. Jack Shattuck. Did you see him on April 6, 1955? A. I did.

Q. What did you do with respect to your operations on that date? A. After talking to Mr. Shattuck I shut our operation down.

Q. Was your operation down on April 11, 1955? A. It was.

Q. What occurred on that date? A. Well, there was a large group of men came to the tipple.

Q. Just say what you saw with respect to this incident?

Mr. Kramer: For the reasons heretofore given, your Honor, this testimony is objected to.

The Court: Same ruling.

296 A. You want me to go ahead?

Q. Go ahead. A. I was down the highway about a mile that morning for a cup of coffee when I noticed a convoy going by the restaurant. So—

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Q. Mr. Phillips, will you go to the map over here so that we can better understand your testimony. A. All right, sir.

Q. This is Exhibit No. 1.

The Court: Give him the pointer, Mr. Marshal, please.

Q. (Continuing) I would like first to ask you, Mr. Phillips, is that the map, has there been any change in the area since the publication of this, map, April 1940? A. Yes, sir, there have been.

Q. What is that? A. The old road going from Pioneer, here, across Stinking Creek, has been changed, and a new road turns off here at what we call Titus Creek and goes up across and comes out in the gap of this mountain right here, and cuts out this part of the mountain here.

This road hasn't been used several years. The new road now goes from the mouth of Titus Creek Hollow up and joins this Stinking Creek road just on top of the mountain.

And the new aerial map that is out now shows this
297 road. It doesn't even show this old road.

Q. That road that you have referred to, does that connect over with the LaFollette to Jellico Highway? A. This road turns off here at Titus Creek goes across and hits into the head of Stinking Creek, and comes on out into Highway 25 north of LaFollette, between LaFollette and Jellico.

Q. Now point out where you were when you saw this caravan. A. I was about a mile and a half south of Pioneer in a little cafe. This caravan came up this highway from towards Titus Creek, up Pioneer, and my tippie is located
on top of the mountain or at Pioneer on the highway.

298 Q. What did you do when you saw those? And you can resume your seat.

(Witness returned to the witness stand.)

A. Repeat the question, please:

Q. What did you do when you saw this caravan? A. Well, as soon as they got by till I could get to my pick-up, I followed them up the highway to see where they was going.

Q. And where did they go? A. They went to our tippie.

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Q. What did you do? A. Well, I drove in to see what they wanted.

Q. How many men were there? A. It would be hard to say. There was quite a number of them.

Q. And your operation was closed down at this time? A. It had.

Q. Can you estimate how many men were there? A. Somewhere between—I would say somewhere in the neighborhood of 50 or 60.

Q. How many automobiles, or did you count them? A. I didn't count them. It would be hard to estimate because my yard was full and they was parked all up and down the highway.

Q. Could you tell from license plates where the cars came from? A. I noticed particularly several cars had 49 county tags on them.

Q. Tennessee? A. Yes, sir. And there was some pick-up trucks in the bunch.

Q. Now was there anything said on this occasion and just state what happened? A. There was. They seemed to have a spokesman that done most of the talking. However, there was several in the group that was talking and cursing, talking pretty mean to us.

Q. You say "us". Who do you mean? A. Well, referring to the company.

Q. Were you there with anyone else besides yourself? A. Well, I was the only one of the company there. However, there was some ladies in the little shack that we had built there close to the tippie.

Q. They are relatives of yours? A. Well, the old lady was my aunt and the other lady was the wife of our shovel operator.

Q. But they weren't involved in this discussion? A. That is right.

Q. They were in the house? A. That is right.

300 Q. Can you tell us just what happened? Go on.

A. Well, the spokesman of the group said they had

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come there to shut us down and if there wasn't enough in that bunch to do it, they had plenty more waiting down the road. I explained to them that I had already shut down and I also told them that we had signed a union contract, but they said that didn't make—I hate to tell just what they did say. They cursed and said it didn't make no difference whether I had or had not signed one, contract, that they was out to shut everybody down and was going to keep them down until they made everybody join the union, and they give us orders not to go back to work until all of our employees joined the union and until they come back and notified us.

Q. Did they leave after that? How long were they there?

A. I imagine about 15 or 20 minutes.

Q. Later on did you discuss this with the people of the company and the partners and employees? A. I did, as soon as I could get in touch with them.

Q. Did you stay down? A. Yes, we did.

Q. What did you finally do and when? A. Well, several days after that—I don't remember just what day it was—why—

Q. Pardon me. Can you place this day with reference to the incident of the John Van Huss mine? A. I can.

301 Q. What day was it with reference to that? A. It was April 11.

Q. Were both instances the same day? A. They was.

Q. What did you start to say about what you did later on and when? A. Well, it was a few days later—I don't remember just the exact date. We decided to go to Jellico and see Ed Daniel.

Q. Did you go? A. We did.

Q. Who went? A. It was my brother and Mr. Pennington and myself.

Q. State what happened at Jellico. A. Well, we drove down in Jellico and saw Mr. Daniel on the street, so we parked and contacted him and we all went around in a little alley there for a discussion. I asked Mr. Daniel why the

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mob or this bunch of men came to our mines. Mr. Daniel said, "Well, you don't expect us to let you run, and you are behind on your welfare and not a man that you have belongs to the union." So we asked him then what would be the best for us to do. And he directed us to go to Middlesboro and talk to the president at Middlesboro.

302 Q. Did you go to Middlesboro? A. We did.

Q. Who did you see over there? A. Mr. Albert Pass, who is the secretary-treasurer.

Q. What is this Middlesboro, what do they have there? A. That is the district office of the United Mine Workers, District 19.

Q. District 19. Who is Mr. Albert Pass? A. He is the secretary-treasurer, District 19, United Mine Workers.

Q. And what was said there? A. Well, we told Mr. Pass about the mob or this group of men visiting us and we had been to see Mr. Daniel, and he directed us over there. Mr. Pass told us that if we would have all of our men to join the union and pay our back welfare, that we could go back to work. And if we had any more trouble, to contact him and he would personally come over there and straighten it out. And he told us that he would send one of the field representatives to us in a day or so to sign up our men.

Q. Was the incident of the gang of men discussed in that conversation? A. It was. We told him about this gang of men visiting our mines.

303 Q. Did Mr. Daniel and Mr. Maddox later come to your tippie? A. They did.

Q. Do you know how that was arranged? Do you recall specifically the arrangements? A. I don't remember how we was notified, but they—we was notified to have all of our men there at a certain day, that they would be there. I don't remember whether it was by letter or by messenger. That is one thing I just don't remember.

Q. Did you have all your men there? A. We did.

The Court: Where? Have all your men where?

The witness: We had all of our men at our tippie.

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By Mr. Rowntree:

Q. And what happened at that time? A. Well, I don't know much about what went on that day because they wouldn't let me in the meeting. They said everybody had to sign up but me.

Q. Why not you? A. Well; they said there had to be one boss and I was the only one that had mining papers.

Q. Did they have a meeting? A. They did.

304 Mr. Kramer: As I understood the witness, may it please the Court, he wasn't at the meeting and he is testifying what was said in the meeting. I don't know whether he meant what was said to him before or not,

Mr. Rowntree: Let me ask him.

By Mr. Rowntree:

Q. Was this statement made in your presence at that time with these people present about who had to join and who didn't? A. No, sir, not in my presence.

Q. It was not in your presence.

Mr. Kramer: I move to strike this evidence.

The Court: Sustained. The motion to strike is granted.

By Mr. Rowntree:

Q. Were you there? A. I was there.

Q. Did you participate in the meeting? A. I did not.

Q. Did you see the others who did participate in the meeting? A. I did.

Q. Was Mr. Burse Phillips in the meeting? A. He was.

Q. Was Mr. James Pennington in the meeting?
305 A. He was.

Q. How far from this meeting place were you? A. I judge about 50 yards. I was in the scale house and they met in our shack.

Q. The other employees were there in the meeting? A. That is right.

Q. State whether or not Mr. Daniel and Mr. Maddox were also in there? A. They was.

Q. Subsequent to that, did the employees—did the employees present checkoff cards? A. How's that?

Testimony of Raymond E. Phillips

Q. Subsequent to that meeting—when was this meeting?

A. I believe it was the 25th of April.

Q. 1955? A. 1955.

Q. And subsequent to that meeting did the employees present union checkoff cards? A. They did.

Q. Was this the first time you had received union check-off cards from any employee? A. That is right.

Q. Did all of them present cards at that time? A. They did.

306 Q. And do your records reflect when the company started checking off dues to the men? A. They do.

Q. Do they show when the first union checkoff dues were paid to the union? A. Yes, sir.

Q. Can you give us the date of that?

Mr. Kramer: Your Honor, I am going to object to any further testimony along this line for the reason that this deals only with an issue, if it be an issue, over which this court has no jurisdiction. The question of the membership and getting into the membership and becoming members is a matter within the jurisdiction of the National Labor Relations Board and has nothing whatsoever to do with this trial. It doesn't raise any issue in this case and it could be prejudicial. We object to any introduction of any of this testimony because it relates to an issue wholly outside violation of the Sherman Anti-Trust Law.

The sole jurisdiction with reference to an unfair labor practice, if anything at all, is what this would amount to, and under the federal acts, the sole jurisdiction with reference to an unfair labor practice is in the National Labor Relations Board and its agencies, and it cannot be a part of and is not a part of any anti-trust violation, and
307 we object, your Honor, to the introduction of this testimony.

Mr. Rowntree: If your Honor please, of course we have contended long and vigorously throughout the whole period of this case that the central part of this conspiracy, the effective instrument is the National Bituminous Coal Wage

Testimony of Raymond E. Phillips

Agreement, the method of imposing that contract on small mines, regardless of the will of the employees of the small mines.

We are showing how that phase of the conspiracy bore particularly on this coal company, part of this case. The development of why the union clause was in the contract.

Here we have an instance of this particular company, of the union getting a contract from the company, a contract with the union shop clause in it and then enforcing that union shop clause, even though before that it had nobody to represent in that company.

This is the method by which the conspiracy has been perpetrated on the small companies, and this—

Mr. Kramer: May I interrupt counsel just a moment?

Your Honor, we are at an issue that is far-reaching and material and raising legal questions that is going to call for substantial discussion. I really feel this ought
308 to be out of the presence of the jury, and I move your Honor, that this discussion on the admissibility of this type of proof be granted outside the presence of the jury.

The Court: All right, let the jury be excused.

309 Mr. Rowntree: Now, if Your Honor please, we have got a mass of proof, union records, from depositions of Mr. Lewis, Mr. George Love, president of Consolidation, we have developed to a high extent, we believe, the reason for the presence of the union shop clause in these contracts, the reason for the control of the welfare fund by the union. We say these things were necessary in order to dominate the industry, to enforce the uniform terms upon the small mines that they could not have been imposed upon the small mines any other way.

I think that that is perfectly obvious, and the whole plan and pattern, the conspiracy was to evade these—the labor statutes in a conspiracy in restraint of trade. Behind these

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labor law violations and evasions was a conspiracy in restraint of trade, and that, too, we have developed by a mass of proof and documents. And one—this is just the essential link in the whole thing, because it shows how it bore on this particular company.

The Court: Well, does this proof have a bearing on the UMW phase of the case or on the trustees' phase of the case.

Mr. Rowntree: I would say that this bears particularly on the union's phase of the case.

310 The Court: The Court recognizes the difficulty in trying to try these cases at the same time. They should have been separated, and the Court wanted to separate them. The Court was advised that these operators just did not have the finances to go through two suits, and by reason of that advice, which the Court knows is correct, because it was stated by Mr. Rowntree in the presence of Mr. Rayson, and this was the reason that the Court consented for these cases to be tried at the same time for the reason that the Court felt that these operators might be deprived of a day in Court unless the Court consented to try these two phases of this litigation at the same time.

It would have been much more simple to the parties, much more simple to the Court, if we could have tried the trustees' phase of the case as one case separate and apart from the United Mine Workers phase of the case, but we are in both cases at the same time, and the Court has to do the best in can in ruling on this testimony.

Mr. Rowntree: Let me make one further comment, Your Honor. I didn't mean to imply that this had nothing to do with the trustees' case.

We have a case here that deals with the validity of the contract under the conspiracy in restraint of trade, and certainly this does bear upon the imposition of such
311 a contract upon this small company to put it and its employees out of business, and this is still part of that, because how did this company come to have a bargain-

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ing agreement like this? Was it by the normal operation of the labor laws? No. We say that it was not by normal operation of the labor laws, that the way it came about was part of the conspiracy, the conspiracy to evade those laws so that these contracts could be imposed upon the small mines.

The Court: Well, the difficulty with that, Mr. Rowntree, is that that is an unfair labor practice, what this witness testified about. Now if it is an unfair labor practice, it is a matter for the National Labor Relations Board, and not this Court. This Court just cannot try these unfair labor practices, because it wasn't set up for that purpose.

Mr. Rowntree: Your Honor, we are not charging an unfair labor practice, we are saying that the anti-trust laws can be violated by all kinds of things, legal means and illegal means they used to evade—it is an illegal means that they used to violate the anti-trust laws, the conspiracy forcing the small mines out of business.

312 The Court: I get your point, Mr. Rowntree, but now how does it fit into the conspiracy, first insofar as the trustees are concerned, and then after you explain that to me, how does it fit into the conspiracy insofar as the UMW is concerned?

Mr. Rowntree: If Your Honor please, we say that the anti-trust law, a contract that violates the anti-trust law is illegal. The Court will not enforce a contract on the trustees' suit where the very enforcement of it will violate the anti-trust law. We say that the enforcement of this contract is a part of the plan to impose the contract upon the small operators, and then put them out of business, and that is exactly what is being done here.

The Court: Well, how does that fit into any conspiracy? It may be that which was done was illegal and wrong, but the Apex case holds the plaintiff's wrongdoing and things of that kind do not enter into the picture as to whether the union violated the Taft-Hartley Act. Now certainly violence

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alone would not enter into the picture as to whether
313 either the trustees or the UMW violated the anti-trust laws.

Now tell me how it fits into your picture or your contention with respect to the violation of the anti-trust laws.

Mr. Rowntree: That, of course, is part of the bigger picture. As Mr. Robertson pointed out a while ago, you have got to start somewhere, and start picking out the toothpicks from the pile. We have a lot of proof, a mass of proof, on the relations between the coal companies—the major coal companies—and this union, and the reasons for this tying up of the union with these big coal companies and the reason for the inclusion of certain terms in this contract, and the enforcement of a union shop clause, just like this case.

All of those things were done because of the tie-up between the big companies and the union in 1950.

The Court: Well, but now, I can't understand why a big coal company, or a little coal company, would be interested in a union clause or non-union clause. The operators, how are they interested in those matters?

314 Mr. Rowntree: Because they want this contract imposed upon the small companies. The proof will show that they and the union knew that the small companies couldn't pay it. The proof will show they knew that the small companies would go out of business. The proof will show that that was part of their plan and purpose, and they wanted that union shop clause in there, because it facilitated, it was necessary in order to control these men and keep them in line and make them members of the union, even though they had no say so whatsoever about it, because they wanted this contract imposed upon the small coal companies, and here we have a typical example of why they were able to do it, and how they would manage to get around the law.

The law says that the employees themselves will have this choice of whether they will sign a contract or not, and these employees, it's obvious, had no choice whatsoever. The law

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is specific that it is up to the employee, and how in the world could they impose this contract on the small company if they followed that law?

The Court: All right.

315 Mr. Kramer: Your Honor, because this is reaching clear across this lawsuit, Mr. Combs is going to talk for Mr. Rayson and myself.

The Court: All right.

Mr. Combs: May it please the Court, in the first place, counsel was talking about the enforcement of a contractual provision that the Court says does not constitute—the Courts, Courts of Appeal—does not constitute a union shop clause at that time.

The union doesn't claim that it had a union shop clause in effect at the time of this lawsuit. In the case of the Fentress Coal Company, and in the Quality Coal Company case and in the Peabody case, two of these cases by the Sixth Circuit that Your Honor is well aware of and one of the cases in the Seventh Circuit, and the Peabody Coal Company case on this clause, the Court held that the writing of that contract did not constitute a union shop clause.

That was the whole clause there, because if it did, it was concededly in violation of the National Labor Relations Act at that time. That clause in the contract in the manner and to the extent provided by law had to take into consideration certain things the union had to do before it could legally ask for the enforcement of that contract.

316 The Court: Mr. Combs, you are in closer touch with those things than the Court. As the Court recalls in the Fentress case, Judge Miller held in substance that that clause wouldn't apply in Tennessee, because the Tennessee law forbade the union shop clause, and that the Court wouldn't assume that the parties to the contract would make a contract in violation of the law. Now, as I understand it, that was the holding of Judge Miller in the Fentress case.

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Mr. Combs: Yes, Your Honor, that is exactly right.

The Court: That clause wouldn't apply.

Mr. Combs: In Tennessee.

The Court: In any state which had the open-shop law or so-called right-to-work law, isn't that it?

Mr. Combs: That's right.

The Court: Isn't that what you mean?

Mr. Combs: That is correct. That is correct. That is exactly right, Your Honor, and what I am saying is just simply this, that all of counsel's contentions of during the time of this so-called conspiracy, the Court's have held and the union concedes to it, that they had no clause in the contract.

317 * Mr. Combs: What do we have here when we keep talking about a union security clause? That the union was trying to force the employees of the mine to join a union against their will by virtue of that clause? What good did that clause do? You couldn't enforce it.

The Court: Didn't do any good in Tennessee according to Tennessee law.

Mr. Combs: And I might point out to Your Honor in the Peabody case, it didn't apply on the national level, because the union had not made the necessary reporting requirements nor had it held an election, so there is no claim whatsoever, and I want the Court to have that clear, that the union has made no claim at all that it had a union shop clause in its contract because it had not complied with the necessary requirements of having a union shop clause during the course of this lawsuit nationally or in Tennessee.

318

What did he have here? Counsel is claiming that the union and operators were using something that wasn't true, I mean the clause of the contract, the implication being that they could enforce this clause. You couldn't enforce it in Court, and if you were going to do it by violence, like

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they claim, to make the operator agree to it, the contract provisions had nothing to do with it. It was the violence they were using.

° That is what they are trying to say here. They are trying to say a group of men went over and visited Mr. Phillips' mine to enforce the contract. There is nothing mentioned there that they said to Mr. Phillips, "You signed a contract that had a union shop clause."

319 So I can see no possible application of that clause, what he is talking about, and when you get to the bottom of this thing, and when you get to the clause, when you get to the heart of this question.

In the first place, under the Anti-trust Act, its violation had nothing to do with the Act. Secondly, concededly the Labor Board had jurisdiction of unfair labor practices of this kind. This is not a tort action or a claim. So the Board has complete jurisdiction of that, whether they are being coerced into joining a union or not.

And it just seems to me that we are getting into a situation here that if we are going to raise the question of whether it is legal or illegal, the union shop clause, or whether it is legal or illegal domination of the employees to try to make them join a union, that we are going to be trying an unfair labor practice here. Because I think we have a right to respond to any such claim and go into it. That is not the function of this court and I don't think it should be.

322 The Court: Do you not agree with Mr. Combs that under the Fentress Coal case that this clause which you refer to as a union clause, is not applicable to Tennessee because Tennessee has a law that is an open shop law and it would not apply to Campbell County, would it?

Mr. Rowntree: It would apply against this coal company, your Honor. That enforced something.

The Court: How could it apply if it was against the
323 Tennessee law? I had one of these cases right here, this iron company in Knoxville, and I held that—it

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is a reported case—that a contract which embodied a union clause was illegal in Tennessee and it was not enforceable, and that case was not appealed. I held that that contract, because it provided for a union shop, was not enforceable.

Would not that rule of law apply to this situation in Campbell County?

Mr. Rowntree: The rule, I believe in your case was, that the union shop had some illusory language in it, and you held the illusory language cannot waive the fact that the clause violated the law.

The Court: Yes.

Mr. Rowntree: And we say the same thing is true here. This clause has got some illusory language in it, and we have tried to develop in the testimony of Mr. Lewis and others what that language means and we haven't got a very clear answer, but here we do have a clear answer what it means.

The Fentress case did not go into the question of what it does mean with respect to the intent of the parties.

The Perry Coal Company case, the 7th Circuit, 324 does. In that case there was no effort to enforce it, and the Court points that out.

Here we have got an effort to enforce it—employees of the employers to join this union, and we say that is what this clause means—it is to be enforced.

Under the conspiracy, the legality of the clause is not the question. It is a question of the intent and purpose in putting that clause in there and how it was carried out in the field.

The Court: Well, the jury cannot go into the intent of the parties in interpreting the clause, I don't think. I think that would be a question for the Court, an interpretation of the clause.

Mr. Rowntree: We charge that they did intend to evade the statute and I believe the proof will be absolutely clear on this.

The Court: Mr. Combs, did you have something to say?

Mr. Combs: No, your Honor, except to say that I think

that the Court did interpret that language. That is what the whole thing was about, whether the language of that contract was in violation of this law, and I think all three courts went into that.

325 And again—I want to emphasize this again. I want to say this, that there is no evidence here that I have heard where a dispute has arisen between a union and any of these operators as to the application of that union security clause that they are talking about.

There is no dispute about that. What they are claiming here is something to be an unfair labor practice and an illegal act of a group of men marching in on an employer and tell them they had to do something—not that they signed a contract and had to comply with it.

326 Mr. Kramer: Before the jury comes back, I want to state this. That the objection we make on behalf of the trustees, your Honor understands, is in behalf of the United Mine Workers.

The Court: I fully understand.

The Court: That goes both to the violence and the unfair labor practice claims.

(Whereupon, the jury returned to the jury box and the following proceedings were had in the presence of the jury.)

327 The Court: Members of the jury, alleged unfair labor practices upon the part of the union are not issues in this case. If any unfair labor practice was committed by the union during the period of time covered by this lawsuit, that will be a matter for the National Labor Relations Board and not for this Court or for this jury.

The question of whether or not violence was committed by the union, or whether violence was incited by the union, or whether violent acts were acquiesced in or encouraged by the union during the period of time involved in this lawsuit, is not an issue in this case for the Court or for this jury.

The Court is permitting testimony of this witness on what

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allegedly occurred at the time he was approached, or allegedly approached, by Mr. Daniel and Mr. Pass and possibly other union representatives, and what followed as a result, or alleged result, of the meeting with these union men; the Court is permitting testimony to be given by this witness about what was done by the employees of his company with respect to signing the union contract, for whatever bearing such testimony may have, if any, on the question of whether or not either the trustees or the union, UMW, one or both, conspired with one or more of the coal operators to
328 restrain trade or to monopolize the coal industry in the Campbell County area.

Before there can be any recovery upon the part of the Phillips Brothers Coal Company against the United Mine Workers, the jury must find, first, that there was a conspiracy in which the United Mine Workers participated with one or more alleged conspirators.

329 Second, that pursuant to that conspiracy, one or more overt acts was committed by one or more of the conspirators, alleged conspirators, to restrain trade or to monopolize the coal industry.

Third, as a direct and proximate result of that alleged conspiracy and the alleged overt acts committed pursuant thereto, that Phillips Brothers Coal Company was damaged and the extent of such damage.

Unless this testimony has some bearing on this conspiracy question or the alleged violation of the anti-trust laws on the part of the trustees or UMW, one or both, then it will not be considered by the jury for any purpose.

The question of whether or not the language to which counsel on each side has referred to many times during the course of this trial, union protection language or union clause language, that is language that mandatorily required the employees of these coal operators to join the union, is not an issue in this case. The interpretation of that language is not an issue in this case, and the interpretation of it is not an issue for the jury. But the Court is permitting

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this testimony to go into the record solely and alone for what bearing, if any, it may have on whether or not there was a conspiracy and whether or not that conspiracy violated either Sections 1 or 2, or both, of the Sherman Anti-Trust Law.

Gentlemen, with that explanation, I will allow the testimony to go into the record.

By Mr. Rowntree:

Q. There was one question. That is the records do show when the union checkoff started and what date was that?

A. It was May 12, 1955.

Mr. Combs: May 7?

Mr. Rowntree: May 12. A. That was for the month of April.

By Mr. Rowntree:

Q. That was for the month of April? A. Yes, sir, dues and initiation on the men.

Q. Now, Mr. Phillips, who kept the records of your company? A. Well, me and my wife.

331 Mr. Rowntree: We are offering the records to
show the tonnage—these are the records on which we
332 stipulated the tonnage. We are putting them in for
the amount of receipts on this tonnage by the company. We are putting them in to get the average price per ton for the years of the case. These, of course, are summaries—you can't look at any one figure in the book to show those things, but we have to put the basic stuff in to get these final figures.

337 Q. Are these copies of your partnership income tax returns received from the Internal Revenue Department for the period 1953 through 1958? A. They are.

Mr. Rowntree: We offer those in series, the first exhibit, 1953 tax return as Exhibit 13.

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(Exhibit No. 13 was marked for identification and filed.)

Mr. Rowntree: 1954 as Exhibit 14.

(Exhibit No. 14 was marked for identification and filed.)

Mr. Rowntree: 1955 as Exhibit 15.

(Exhibit No. 15 was marked for identification and filed.)

Mr. Rowntree: 1956 as Exhibit 16.

(Exhibit No. 16 was marked for identification and filed.)

Mr. Rowntree: 1957 as Exhibit No. 17.

(Exhibit No. 17 was marked for identification and filed.)

Mr. Rowntree: 1958 as Exhibit 18.

(Exhibit No. 18 was marked for identification and filed.)

By Mr. Rowntree:

Q. Now, Mr. Phillips, who prepared your tax returns? A. A lawyer in Oneida, Tennessee by the name of Guy Jeffers.

Q. Have you recently gotten into those records? A. We have.

Q. Did you discover errors on your tax returns? A. I did.

Q. What is the nature of your job with the Phillips Brothers Coal Company?

Mr. Kramer: Nature of what?

Mr. Rowntree: His job with the Phillips Brothers Coal Company.

A. My chief job is the mechanic for the company.

Q. What else do you do? A. Well, I am the manager of the company. I try to keep all the necessary stuff on the job for the operation.

339 Q. And you keep the books? A. And I keep the books.

Q. With the help of your wife? A. That's right.

Q. What job do you spend the bulk of your time on? A. As a mechanic.

Q. Do you have any other mechanics on the job? A. No, sir.

Q. Do you have much equipment on this job? A. Yes, I have quite a bit of earth-moving equipment.

Q. What is the nature of this equipment? A. Well, bull-

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dozers, power shovels, and tipples to keep running, and our crushing plant.

Q. Your 1958 book, Exhibit 7, have you checked that book to determine whether it jibe by your tax return? A. Yes, sir, and it checks with our tax return.

Q. Your tax return figure, where was it taken? A. It was taken—

Q. For gross income. A. It was taken off of the royalty reports that we sent to the land company, which is listed in our book.

Q. And that book also contains the amounts received per ton? A. That's right.

340 Q. Both rail tons and truck tons? A. Both rail tons and truck tons.

Q. And are those figures accurate with respect to what you actually received? A. Yes, sir.

Q. And that figure was put into the income tax return? A. That is right.

Q. As gross income? A. That's right.

Q. Does that jibe with your deposits? A. No, it does not.

Q. Are the deposits less than your amounts received per ton listing? A. Yes, sir.

Q. And why is that? A. Well, sometimes we would ship direct and have to sign our payments over to a bank as a note.

Q. Did you have notes outstanding at that time? A. We did.

Q. And you do not receive the payments for the coal yourselves, but it would be— A. We would sign it over to the bank.

Q. And the bank would receive it? A. That's right, and as the note was paid off, then they would send us
341 the cancelled note.

Q. So is your tax return correct for that year, 1958? A. It is.

Q. Did you suffer a loss in that year? A. I sure did.

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Q. Did you use that loss as a carry-back for tax purposes? A. No, sir, I did not.

Q. Why not? A. Well, by not being a bookkeeper, I didn't know anything about the carry-back law.

Q. In 1957, does your income tax figure jibe with the amounts received per ton for coal? A. They do—

Q. In your listing? A. They do not.

Mr. Kramer: May I ask the question, what does counsel mean by income tax figure? As shown on the return that was filed.

Mr. Rowntree: As shown on the return that was filed, which would be Exhibit 17.

By Mr. Rowntree:

Q. Where was the figure of gross income for 1957 taken, that year? A. It was taken from our bank deposits 342 * which had included some money borrowed from the bank and money borrowed from my brother which we had put into the business, and it was added into our gross receipts as income.

Q. Can you list those figures from the book? A. Yes, sir. I have one right in front of me, says "Cash borrowed, \$4,000.00"; cash borrowed from my brother, 382.47; and cash on note.

Q. How much. A. \$4,387.00. I have another item, cash on note, \$4,500.00.

Q. And that was put in your deposits for that year? A. It was.

Q. Was that figure put on your tax returns? A. It was.

Q. As gross income? A. It was.

Q. Was that amount of deposits which you put in the gross income greater than the amount which you received on tons of coal? A. It was.

Q. In 1956, have you checked in the absence of the 1956 book, the royalty reports, Exhibit Five, which you made to the land company to determine how that total amount re-

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ceived per tons accorded to the income tax figure?

343 A. Let's see, according to our 1956 reports to the land company—

Q. I'm talking about '56, I think I said '55. '56 is what I am talking about. A. Yes, 1956. It showed less profit than what we actually found when we went through the book.

Q. Now have you checked the 1957—what was the amount of the difference there? A. In—

Q. 1956, the 1956 difference? A. \$4,951.54.

Q. And have you checked the 1955 books in a similar manner? A. I did.

Q. And again was the gross receipts on tax return taken from your deposit account? A. It was.

Q. And was the amount received per ton greater than that amount? A. It was.

Q. In what amount? A. 1955, there was \$28,278.55 difference.

Q. That is greater income than you actually reported on your tax returns?

The Court: How much?

344 Mr. Rowntree: Twenty-eight—give him the figure.

The Witness: \$28,278.55.

By Mr. Rowntree:

Q. Have you checked deductions as shown in your paid-outs for that year? A. We have.

Q. Have you compared them with the tax return deductions? A. We have.

Q. And is the difference which you have computed there on your deductions, deductions that you did not take on that tax return? A. It is.

Q. And how much is that difference? A. \$7,256.69.

Q. What nature were those items of deduction that were not taken? A. Well, he had failed to list the explosives that we purchased and used, and the other items I would have to check through the books.

Q. What about repairs? A. And repairs, yes, I remember. Repairs was short by a few thousand dollars.

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Q. Is repair a pretty big item in your operation?
345 A. It is our biggest item.

Q. How do you account for this—these differences in books and tax returns? A. Well, before he had taken our deposit receipts as our total income instead of using the gross sales at the end of each month.

Q. Well, why didn't you correct it? A. Well, after he prepared the books and turned them over to me, I didn't examine them any more. I just filed them away for that year.

Q. Have you taken this up with Internal Revenue? A. I have.

Q. What did you do? A. Well, I went to see them and explained that we had found these discrepancies, and we wanted to file some amended returns.

Q. Have you filed those returns? A. We have.

Q. Have you paid the individual taxes? A. We have.

Q. Are these the amended returns, '55, '56, and '57, for the partnership? A. Yes, sir, these are the returns for those years.

346 Mr. Rowntree: Offer 1955 amended return as Exhibit 19; 1956 as Exhibit 20; and 1957 as Exhibit 21. (Exhibits 19, 20, and 21 were marked for identification and filed.)

347 Q. Did you give the government copies of all of these books? A. We did, with a lengthy letter of explanation.

Q. Now were you able to take the deductions for 1955 that were not taken on the original returns? A. No, sir, we was not.

Q. So actually those deductions should be made from the amended return figure to get at your actual profit for that year? A. That's right.

Q. And what would be the amount of actual profit taking

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off those deductions? A. The actual profit should have showed \$35,798.98.

Q. Now isn't that before the deductions? A. Let's see. Yes, that was before the deductions. It should have read after deductions \$28,542.19.

348 Mr. Kramer: What year are we talking about?

Mr. Rowntree: That is '55.

By Mr. Rowntree:

Q. In 1956 what was the actual profit after the amended return? A. Profit in 1956 after the amended return was \$17,325.79.

Q. Now we all make mistakes, did we find another error after we filed these tax returns, amended, in '57, pertaining to tonnage reports that you— A. Oh, yes. After filing these I noticed in the back of one of these ledgers some cars of coal that the auditors, who audit for East Tennessee Iron & Coal Company, had audited our record through our broker and had picked up some cars that we did not have any weights or numbers on and it was a year after the coal had been shipped before we knew about this coal.

Q. And that was put over somewhere in— A. That was put over in 1958 book and was paid the royalty on then, in 1958.

Q. Have you computed the amount of receipts on that coal which should have gone into 1957? A. We have.

Q. And after making that adjustment what is your net loss for 1957? A. Our net loss for 1957 is \$20,000—

349 Q. Do you have a seventeen thousand figure? A. No, it is \$16,712.85, that is for '57?

Q. Let's see it? A. (Handing book to counsel)

Q. This figure here. A. So much scribbling here. Oh, yes.

Q. What is your net loss for 1957? A. Net loss for 1957 was \$17,741.97.

Q. Now the 1958 return which apparently required no adjustment, what loss does it show, net loss for the operating company. This is Exhibit No. 18. A. Loss was \$12,311.28 in 1958.

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Q. Have you computed the amount—I will ask you this, Mr. Phillips, what type of coal do you sell? A. We sell three grades of coal, or three types of coal you might call it.

Q. What are those? A. Block coal, egg coal and steam coal.

Q. What kind of market do you have for your block and egg; what type customer? A. It is coal yards and domestic. It is strictly a domestic coal on our block and egg.

Q. How is that carried from your operation? A. By truck.

350 Q. Trucks of customers, or how? A. That is right.

Q. What kind of price did you get for that coal, truck coal, block and egg? A. We get a pretty fair price.

Q. Have you computed the amount, the average amount of the price for your truck coal? A. I have.

Q. What is that for this period '55 through '58? A. Well, on truck coal the average price for 1955 was \$5.31¼ a ton net us at the tippie.

Q. And what about 1956? A. Average price per ton in 1956 was \$6.14½ a ton.

Q. What about 1957? A. 1957 the truck coal average price was \$5.89 per ton at the tippie.

Q. What about 1958? A. 1958 average price for truck coal was \$6.04-2/3 per ton, average, at the tippie.

Q. Did the truck coal hold up well through this period? A. Fairly well I would say.

Q. It showed no pattern of decline? A. No.

351 Q. Have you computed the tons of coal you shipped by rail for the period 1955 through '58? A. I have.

Q. And have you computed the amount received for rail tons for that same period? A. I have.

Q. And where did you get those figures from? A. From the reports that we would send in to the land company at the end of each month.

Q. Are those the figures that you have carried over into the bound volumes that you show your tonnage and your amount received per ton? A. They are.

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Q. And are those figures accurate? A. They are.

Q. Have you figured the average price for rail coal in this period, 1955 through 1958? A. I have.

Q. What kind of coal goes by rail from your operation?
A. Steam. Steam coal.

Q. And will you give the average price for rail coal for those four years. A. Average price per ton coal shipped by rail, 1955 averaged us \$3.37½ per ton at our loading point.

1956 it averaged us \$3.92 per ton at our loading
352 point.

1957 it averaged us \$3.20-1/3 a ton at our loading
point.

1958 it averaged us \$3.13-1/3 per ton at our loading point.

Q. Have you set those various figures, those computations of total amounts that we have been talking about, down on that piece of paper? A. I did.

Mr. Rowntree: We offer that as Exhibit No. 22.

(Exhibit No. 22 was marked for identification and filed.)

Mr. Rowntree:

Q. Mr. Phillips, are there available records showing the destination of your rail coal? A. No, sir.

Q. In the period 1953 through 1955. A. Not in our possession, no.

Q. Do you know if a search has been made for records in your sales agency? A. They have.

Q. Who was your sales agency predominantly for that period of time? A. Well, the one that handled the most of our coal was Royal Fuel Company.

353 Q. At the beginning did you have some other sales agent? A. Yes, we had sold through several other sales agencies. Not to no great amount.

Q. In 1956 who was your customer for rail coal? A. 1956?

Q. Yes. A. Mostly TVA.

Q. And was that true for the balance of the period, 1956, 1957 and 1958? A. We sold—no, sir. We sold coal to Duke Power Company and to Tampa Electric Company during those times.

Testimony of Raymond E. Phillips

354 Q. And when would you make sales to those other customers besides TVA? A. Whenever we could get an order with them.

Q. Mr. Phillips, can you account for the rise and fall of the steam coal price? A. No, sir, I cannot.

Q. When you sold to these other customers besides TVA in the period '56 through '58, what comparison could be made between TVA price and the price that you got from these other customers?

.

A. I got a better price from Duke Power Company and Tampa Electric Company than I did from TVA during this period.

By Mr. Rowntree:

Q. In 1956 do you know if the TVA had opened up additional generating units? A. Yes, sir.

Q. In its Kingston steam plant, shortly prior thereto? A. Yes, sir.

The Court: What year was that?

Mr. Rowntree: 1956 was the year that we asked the question upon. Additional units had been put in a short time before that in the Kingston plant.

By Mr. Rowntree:

355 Q. Has there ever been a good steam coal market in this area? A. No, sir.

Q. Can you account for the fact that there was not a good steam market, say, in 1953 in your operation in this section? A. No, sir, I couldn't account for it.

Q. Can you account for the increase in the price in steam coal in 1956? A. No, sir.

Q. Can you account for the decline in the steam price after 1956? A. No, sir, I cannot.

Q. Turning to the equipment of the company just briefly, I believe your tax return depreciation schedules will show the nature of the equipment that you had? A. That is right.

Q. In your operation. Will you give us a resume — go through here and give us some idea of the kind of equip-

Testimony of Raymond E. Phillips

ment that the company used and the purchases of large additions to the equipment from time to time. A. 1953, we had some coal screens for a tippie. We have a power shovel.

Q. Give us an idea of the cost price of those things. A. Coal screen, we paid \$1,000 for. A power shovel we had purchased, \$42,975. And a used D-7 'dozer was \$4,000, and a new TD-24 bulldozer was \$24,890. Electric welder we purchased, used, \$550. Electric motors to run the screens, \$576.97. A 1948 Jeep, \$400.

Q. Is that all? A. No. A coal crusher, \$889.08. And a power shovel, \$2,550. And a horizontal drill, \$2,750.

Q. Will you go through the later returns and show major items of equipment that you purchased and what they cost? A. Each year?

Q. Yes. Start with '54 there. The equipment you have just listed is what you had your first year of operation, I take it? A. That is right. 1954, 1953 Chevrolet pick-up.

Q. Just give the major items, A. You want the additions, what we added onto?

Q. Big items like shovels or 'dozers. A. Power shovel.

Q. How much? A. Horizontal drill, screen — power shovel we bought in 1954, \$26,000. GI Truck bought that year for a thousand dollars. 1955 pick-up truck, \$1,670.89. And a pick-up truck, \$1,400.

357 Q. I think we have another major item here in '58, June 1, '58, is that right? A. That is right.

Q. What is that? A. That is a two and a half yard Lima shovel, \$40,000.

Q. This TD 'dozer, 24 'dozer, that was not actually picked up in '57 but it was picked up in '56, isn't that right? A. That is right. We overlooked that. It shows it in '56.

Q. The cost of that was \$33,000? A. \$33,000.

359

CROSS EXAMINATION

By Mr. Rayson:

Q. Mr. Phillips, as I understand, you are president of

Testimony of Raymond E. Phillips :

Phillips Brothers Coal Company, is that correct? A. That's right.

Q. Now the period we are concerned with, from 1953 through 1958, with exception of the incident that you described this morning when this group of men came to your mine and your discussion with Albert Pass, would you state whether or not you had any other difficulty of any kind at your mine during that five and a half year period, four and a half year period, rather? A. Not labor violence if that is what you mean.

Q. You had no labor difficulty of any kind during that four and a half year period other than the one which you have described? A. That's right.

Q. Did you have any contract with field workers during that time other than those you described in your direct examination? A. Not to my knowledge.

360 Q. In April of 1955, how many days of work did you miss? A. We closed April the 6th, and the boys signed on April the 25th, I believe, and I believe we went back—I'm not positive as to that date—but I believe we went back the next day, which would have been April the 27th.

Q. In other words, you were not working for something like two weeks and two days? A. About twenty days, I'd say.

361 Q. Now, you say that after you signed this contract, you did not pay the wages called for by the contract, is that right? A. That is right.

362 Q. Was this not true during the entire four and a half year period that you had this contract with the United Mine Workers? A. Well, I actually never did know what the scale price was on labor.

Q. Well, I believe that you explained to us this morning your wages ran from something like a dollar to two dollars and twenty-five cents for your top-paid men? A. In '53.

Testimony of Raymond E. Phillips

Q. And didn't that pattern more or less hold true throughout the four and a half year period? A. No, sir.

Q. Did your beginning wage not remain at one dollar per hour? A. It did not.

Q. What did it go to? A. Well, at the present time, it is a dollar and a half.

Q. I'm talking about during the four and a half year period. A. I couldn't tell you the exact dates when we made raises, because some of the laborers would want to learn to be operators, and as they advanced in learning, why we raised their wages.

363 Q. Well, I'm speaking about the wage that you paid a man, unskilled man, who came to work for you. Didn't that wage remain about a dollar or perhaps a dollar and a quarter throughout that four and a half year period? A. Well, I don't know just exactly how long it's been since we raised to a dollar and a half, but it ranged between a dollar and a quarter and a dollar and a half.

Q. And those were for your laborers and helpers and oilers and people like that? A. That's right.

Q. And whatever you decided to pay an individual was what you and he decided? A. That's right.

Q. And so whatever money you made or lost was based upon this labor agreement that you had with the men and not by reason of the wage scale set forth in the union agreement, is that correct? A. How's that now?

Q. So whatever you made or lost during this four and a half year period took into account the wages that you and your men agreed upon and not the wage scale set forth in the union contract. A. That's right.

Q. Now after you signed the agreement in 1953, I believe that you filed certain reports in writing with the United Mine Workers of America Welfare and Retirement
364 Fund, is that correct? A. That's right.

Q. That were substantially below the actual tonnage which you had? A. That's right.

Q. Now to refer to the April incident, as I understand

Testimony of Raymond E. Phillips

your testimony, you say you went to talk to Albert Pass in Middlesboro? A. That is correct.

Q. Did you say that Albert Pass told you that the men would have to join the union and that you would have to pay up your back welfare? A. He did.

Q. Fund royalties? A. He did.

Q. And did you say that that is what you did before you went back to work? A. We paid—we brought the time up to date as token payments like we had been before. We didn't pay no full forty cents a ton.

Q. Mr. Phillips, you recall the occasion that your pre-trial deposition was taken in this case, do you not? A. I do.

Q. And do you recall my asking you this question, 365 "What happened when you went over to Middlesboro? And I'll ask if this was not your answer, "We went in and Mr. Pass said he would talk to us, and so we told him about the mob visiting us and all, and he said, well, that all of our men would have to join the union, and we would have to pay up our back welfare before we could go back to work, so he told us to come on back home, and he would send Taylor Maddox to visit us, so that is what we done."

Was that your answer to that?

A. That is the substance of the conversation.

Q. Now, was it on April 25th, of 1955, that your employees joined the union? A. All I have to go by is a union card that one of my employees has with that date on it. To swear to the exact date other than this card with the date on it, I couldn't swear to it.

Q. That is your best recollection at this time? A. That is the best of my recollection.

Q. And you know that you went to work at about that time? A. Well, I think it was the day following their visit that we went to work.

Q. Now isn't it a fact, Mr. Phillips, that you did not make any report to the Welfare and Retirement Fund until July

Testimony of Raymond E. Phillips

29, 1955? A. I couldn't tell you the exact date without
366 checking back through the records. I don't remember
when we made the payment.

Mr. Rowntree: If Your Honor please, that is contained
in the stipulation that was filed at the beginning.

The Court: All right.

Mr. Rayson: May I approach the witness, Your Honor?

The Court: Yes, sir.

Mr. Rayson:

Q. I'm going to show you what purports to be a report
to the United Mine Workers of America Welfare and Re-
tirement Fund dated November 12th, 1953. It also purports
to have your signature. Is that your signature, Mr. Phil-
lips? A. It is.

Q. Now, what tonnage did you report on that particular
report? A. 804.35 tons.

Q. And do you know what your actual tonnage was for
that period? A. No, sir. It's in the records, I do not know it.

367 Mr. Rayson: We would file this as Exhibit Num-
ber 23.

(Exhibit 23 was marked for identification and filed.)

By Mr. Rayson:

Q. Now on January 19, 1954, did you also file this report
with the Welfare and Retirement Fund? A. Yes, sir.

Q. Does this report also bear your signature? A. It does.

Q. And what tonnage does it indicate that you reported
at that time? A. 482.66 tons.

Q. Do you know what your actual tonnage was at that
time? A. No, sir, I do not.

Q. I'll ask you if it wasn't approximately four times the
amount that you show on that report? A. I think we figured
it about ten cents a ton.

Q. And now on July 29, 1955, some three months after
the events that you testified to earlier in your testimony, I'll
ask you if you didn't file a report with the Welfare and
Retirement Fund covering several different periods of time?

Testimony of Raymond E. Phillips

A. I did.

368 Q. And what tonnage did you indicate on that? A. Well, it was several months, there was no indication, and 780.40 tons.

Q. Now, Mr. Phillips, you say there is no indication as to several of these periods, actually what you reported to the Welfare and Retirement Fund was that you had no production during several of those periods, is that not correct?

A. That's right.

369 Q. Did you not say on this that you had no production in the month of December 1953, and in January, February, March, April, May and June of 1954, that you had no production? A. I did.

Q. Did you not also say you had no production for the month of September, 1954? A. If that is my copy I did.

Q. Is this your signature on that report? A. It seems to be down here.

Mr. Rayson: We want to introduce copies of the last two reports to which I have referred, the one of January, 1954, as Exhibit No. 24.

(Exhibit No. 24 was marked for identification and filed.)

Mr. Rayson: And the one of July, 1955 as Exhibit No. 25.

(Exhibit No. 25 was marked for identification and filed.)

By Mr. Rayson:

Q. I believe you have filed two other reports with the welfare fund, one of December, 1955, and one of August, 1956; is that correct? A. It looks like this date has been changed.

I don't remember just—it has been marked out. This
370 is my signature to this copy.

Q. Does that appear to be your signature? A. This is my signature.

Mr. Rayson: We would file Verifax copies of these as Exhibits No. 26 and 27; I believe.

(Exhibits No. 26 and 27 were marked for identification and filed.)

By Mr. Rayson:

Q. And referring to the report you filed in December of

Testimony of Raymond E. Phillips

1955, I think you say you had no production for several periods; is that not correct, Mr. Phillips? A. That's right.

Q. And at that time you brought your report up—it was only then that you brought your report up until April, 1955?

A. It looks like brought up to June.

Q. This report covers from October, 1954 through June of 1955; is that correct? A. That's right.

Q. And so you don't report on April, 1955, the time you say all these events occurred, until December of that year; is that correct? A. That's right.

Q. Some eight months after it happened.

Mr. Rowntree: Is the purport of counsel's question
371 that no payments were made after the Middlesboro visit?

Mr. Rayson: The witness has testified that he talked to Albert Pass and that Albert Pass told him that he had to bring his reports up to date with the welfare fund, and the purpose of this examination, among other things, is to show that he did not do it at that time and did not do it until 7 or 8 months later.

The Witness: Mr. Pass told us if we did not have enough to bring it up at one time we could make the payments if we so desired.

Q. As a matter of fact, Mr. Phillips, during all of
372 these periods for which you reported that you had no production, you had a very considerable production, did you not? A. As far as running from the mines there was months we did not have. Sometimes we would have coal stocked on the yard that we would sell.

Q. Did you produce coal each month you were in business, Mr. Phillips? A. Not each month; no, sir.

Q. Aren't you familiar with the stipulation which has been filed in this case and which was read to the jury at the beginning of the trial which shows your monthly production month by month during this entire period? A. I am saying

Testimony of Raymond E. Phillips

that there was months that we would work out of the stock pile and not from the pit.

Q. There was no six months period for which you had no production, was there? You did not fail to produce coal for a period of six months as you reported to the Welfare Fund, did you? A. I would have to check back.

Q. Don't you know that you produced coal every month that you were out there, Mr. Phillips? A. I did not.

373 Q. You did not discuss with Albert Pass this matter of paying short to the Welfare Fund, did you? A.

No, sir.

Q. So when Albert Pass told you you could take some time to pay it, he was not telling you that you did not have to pay on the production that you actually had; is that correct? A. The amount wasn't mentioned.

Q. Mr. Phillips, in 1953 your partnership filed its first income tax return, I believe. A. That is right.

Q. And you reported a loss of that year of \$24,000.00; is that correct?

Mr. Rowntree: No, your Honor, it isn't correct.

Mr. Rayson: I am looking at what I thought was a Verifax copy of the income tax return. I will look at the ones that were filed. A. \$2,438.04 loss in 1953. But we had only operated from July.

Mr. Rayson: I stand corrected. It was \$2,438.04, your loss.

By Mr. Rayson:

374 Q. Now in 1954 your report, the partnership, showed a profit of \$9,554.00? A. That is correct.

Q. In 1955 when you first filed your partnership return you showed a profit of \$7,520.00; is that correct? A. That is right.

Q. And now you have filed an amended income tax return on which you show or on which you claim a profit of \$35,798; is that correct?

Mr. Rowntree: May it please the Court, we are getting

Testimony of Raymond E. Phillips

into some tax law here. There is a different statute of limitations for claiming deductions from reporting amounts of income not previously reported.

We had to file a return on the additional income but we could take additional deductions that were not previously claimed.

We do not say that there was a profit of thirty-five thousand. But we say it was thirty-five thousand less these deductions not previously claimed and which could not
375 be claimed at that time.

The Court: Yes, sir.

Mr. Rayson: May I say, this amended return, according to the copy I have, was filed 13 days before this trial started and six years after the year in question. And I think that certainly this goes to the credibility and propriety of this sort of — I think that at least we could ask preliminary questions about it today pending our full examination.

The Court: Yes.

Mr. Rowntree: We don't contest his right to answer the question, but we want our position clear.

We are not claiming any benefit in this case from any additional profit shown in this return.

The Court: All right.

By Mr. Rayson:

Q. In order that I may understand your previous testimony, Mr. Phillips, is it your contention by these amended income tax returns that your profit was thirty-five thousand and some dollars in 1955? A. That's right.

Q. In 1956—

Mr. Rowntree: I think that is exactly what I mentioned before, that it is not that but it is less the deductions.

376 By Mr. Rayson.

Q. You have also changed your figure to show an added loss or an added profit in 1956; is that correct—added profit? A. Yes, sir.

Q. Now in 1957, Mr. Phillips, would you explain the

Testimony of James M. Pennington

changes which were made in your income tax return in that year? A. I will try to.

Q. Would you explain how you claimed a loss in that year of \$20,000 on this amended return rather than a loss of \$16,712 in your original return? A. In 1957 it was—let's see, \$3,672.35 that we did not get credit on our dynamite and repairs that we should have had credit on for that year.

Q. And that is the basis for the change that you made? A. Well, with—where they had added borrowed money to our income, those two items made the difference in our changes in that year.

Q. In other words, you came up with an additional
377 loss of \$3,672; is that right, additional expenses? A. That's right.

Q. And you added those expenses onto the loss you had which was originally reported as \$16,712, and you came up with \$20,385? A. And 20 cents. That's right.

382 Q. One more question, Mr. Phillips. On these reports that you made to the Welfare Fund, just above the place where you signed them, I want to ask you if you don't recall this language that is printed there: "The number of tons of coal produced for use or sale as shown above represents to my best knowledge and belief the total amount of coal produced for use and sale by this concern for the period specified." Do you remember that? A. I couldn't tell you what it says on that. No, sir, I couldn't.

Q. Would you examine this and see if this language is there just above your signature? A. It is there. But I hadn't read it.

383

JAMES M. PENNINGTON

called by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Rowntree:

Q. What is your name, sir? A. James M. Pennington.

Testimony of James M. Pennington

Q. Are you one of the defendants and cross-plaintiffs in this case? A. Yes, sir.

Q. Are you a native of Scott County? A. Yes, sir.

Q. After World War II were you engaged in the mining business? A. Yes, sir, after World War II.

Q. What were you doing? A. I was working for
384 my father.

Q. Did he run a mine? A. He did.

Q. Whereabouts? A. At Paint Rock, Tennessee.

Q. Did you become a member of the United Mine Workers? A. I did.

Q. What were the circumstances under which you became a member? A. Well, there was a group of men came over and said we would have to join and so we did.

Mr. Kramer: If your Honor please, we don't know when this is. After World War II, 1945. Unless it is more closely tied up, even under your Honor's previous ruling, it would not be competent.

The Witness: It was around '46 or '47.

Mr. Kramer: I object to it as being beyond the scope of this lawsuit and having nothing to do with it.

The Court: Do you insist that has any relevancy?

Mr. Rowntree: Well, it seems to me, your Honor, it shows the method or a practice in the coal fields.

The Court: I sustain the objection on what occurred in 1946. I think that is too remote to the matters involved here, at the present time.

385 Mr. Rowntree: Yes, sir.

By Mr. Rowntree:

Q. You have heard the testimony of Mr. Phillips concerning the organization of Phillips Brothers Coal Company, the three member partnership? A. I have.

Q. Is that testimony accurate to your remembrance? A. It is.

Q. You have heard the circumstances under which the contract was signed with the United Mine Workers? A. Yes, sir.

Testimony of James M. Pennington

Q. Had Mr. Daniel been to the operation and talked with you before the contract was signed? A. He had.

Q. And Mr. Raymond Phillips, was he present or was he not? A. He was not.

Q. Did that discussion partly cause the discussion about the contract?

Mr. Kramer: I object to that as leading. I didn't object to it as a conclusion before, but this is certainly improper and I object to it.

Mr. Rowntree: Strike it.

The Court: Sustained.

By Mr. Rowntree:

Q. Were the circumstances with respect to the signing of the contract related by Mr. Phillips in accordance with your remembrance?

Mr. Kramer: Now, your Honor, I object to that. When we get out just to fringes, I do not object to that sort of thing, but this proving by adoption of testimony I think is generally condemned by the courts and I object to it, your Honor.

The Court: Sustained.

386 By Mr. Rowntree:

Q. Will you relate the circumstances under which the contract was signed? A. From the time we first met?

Q. Yes. A. We met Mr. Daniel at Caryville. Do you want me to go back before that time?

Q. Well, yes. A. Well, I take care of a tippie is mainly my job, milling coal and such as that. I was at the tippie and Mr. Daniel, he come by every once in a while. I won't say how many times and I don't remember the dates because I didn't think it necessary at the time. He would come by and ask us how we was doing. He said we was going to have to sign the contract, and I figured that from the time we moved in Scott County. We, Buster, Burse, my

387 partners—

Q. Who is Buster? A. Raymond, Mr. Phillips. We got together and talked it over and so we met Mr. Daniel

Testimony of James M. Pennington

at Caryville. He told us, he said now he would let us move in and it was time for us to sign the contract with the United Mine Workers and we told him we couldn't pay the 40 cent ton royalty, and we didn't think we could pay the scale, whichever it was.

Q. Speak louder, Mr. Pennington. A. We told him that we couldn't pay or didn't think we could pay the scale of wages under the UMW contract. He told us that if we could sign the contract, we could work out an agreement with our own men as to whatever we want to pay them, that that was our business, and he didn't have nothing to do with it. He said, "Pay in what you can to the welfare." We told him we couldn't sign it that day for we had another partner concerned and we had to go back and talk it over with him.

Q. Did you have a discussion? A. We did.

Q. What did you decide to do? A. We decided we was going to have to sign it or go out of business.

Q. What do you mean by that? Why do you say that? A. Well, a little afraid.

388 Q. Are you a man that is easily scared? A. I don't think so.

Q. What decorations did you receive in World War II?

Mr. Kramer: Your Honor, we object to that as being wholly irrelevant and immaterial.

The Court: I sustain that, Mr. Rowntree.

Mr. Rowntree: Could we ask him about his campaigns in the war? I want to get some testimony that these men are not cowards.

The Court: I will let you show if he was in the war, how long, and if he participated in campaigns, yes. It may bear on this witness' credibility as a witness. Go ahead.

Mr. Kramer: We do have the objection, your Honor, as to being irrelevant and immaterial.

The Court: Yes.

Mr. Kramer, do you contest anything that he said about this? I understand the issues are going to be sharply drawn with respect to what this man has testified about. Am I

Testimony of James M. Pennington

correct or incorrect in that?

Mr. Kramer: On some of what he testified, but not on everything.

The Court: The jury has a right to know the background.

Now, Mr. Rowntree, of course you can't go into
389 these minute details about these matters, but I will
let you ask him enough to let the jury get some knowledge of this witness and his background.

By Mr. Rowntree:

Q. What campaigns did you participate in in World War II? A. Actually I was in seven, seven major campaigns.

Q. Where? A. North Africa, Sicily, went in on France on D Day, the spearhead for that is what the Army called it.

Q. You have heard the testimony of Mr. Phillips about the meeting of the employees at the tipple. Well, first, did you go to Middlesboro? A. Yes.

Q. With Mr. Phillips? A. I did.

Q. Did you go to Jellico before that to see— A. Yes.

Q. Will you state the conversation with Mr. Pass at Middlesboro? A. Well, when we went in the office, I believe that Mr. Pass was out, or a man coming in the door. We went on in and he greeted us. We told him our business there. I think he already knew it, but we told it anyhow. We asked him, told him about the group of men that congregated at our tipple on that certain date and asked him what
390 we could do about going back to work. It looked like we were going to have to go back to work. He said, told us that if we would make our men join the union and pay up our back welfare, that everything would be all right, and when we come back, if it wasn't all right, that he personally would come down and see to it.

391 Q. Were arrangements made for Mr. Daniel to—

A. He did, he told us that he would send out a representative to meet with us.

Q. And were arrangements for that representative to meet the men made? They surely must have been, they came in the next day or two.

Testimony of James M. Pennington

Q. And were you present? A. I was.

Q. Did you go into the meeting of the employees? A. I did.

Q. With the representatives of the union? A. I did.

Q. Why was that? A. Mr. — I believe Maddox — and Daniel said that Burse and I would have to join. One couldn't, had to be one boss, so under those circumstances, why we signed it.

Q. Did the men apply for hospital cards at that time?

Mr. Kramer: Now, Your Honor, we are still in the same field—we argued—

Mr. Rowntree: All right, strike it.

By Mr. Rowntree:

Q. Do you have anything to do with the record keeping of the company? A. No. I do not.

Mr. Rowntree: You may ask him.

CROSS EXAMINATION

By Mr. Kramer:

Q. You say, Mr. Pennington, that you were a member of the union for some years, were you not? A. A few, I don't remember how many.

Q. When I say "union"; I mean United Mine Workers of America. A. Yes, sir.

Q. And you had personally worked as a coal miner yourself in different occupations or different jobs in the coal mines? A. No, sir.

Q. Never had? A. Never had.

Q. But you had been a member of the union in connection with your work around the mines, whatever you did? A. Yes, sir.

Q. Now when you formed this partnership, you became a member of the partnership when? 1955? A. '53.

Q. 1953, and you were a member of the union at that time?

A. I believe I was, I wouldn't swear to it.

393 Q. And had been for quite some months before that? A. I had been.

Q. Now on occasion when you met over at Middlesboro, after you had had the conversation with Mr. Daniel, and

Testimony of James M. Pennington

he had suggested you talk to Mr. Pass in Middlesboro, you went over there. Who was with you? A. Raymond Phillips and Burse Phillips, my partners.

Q. Now, up to that time, during the years 1953—that was in '55, wasn't it? A. I believe it was.

Q. That was two years after you had become a member of the partnership, or approximately that? A. Yeah.

Q. And during that period of time, you knew that you were operating under a collective bargaining agreement with the United Mine Workers of America, didn't you? A. I did.

Q. And you knew you hadn't paid the welfare fund? A. I think I remember that we didn't.

Q. You think you were familiar with that? A. Yes.

Q. You haven't much doubt about it? A. Not much.

394 Q. And because you hadn't paid the welfare fund which is one of the provisions of the collective bargaining agreement, and you went and asked Mr. Pass why you couldn't operate, in substance, and he said, in substance, "You haven't paid the welfare fund." A. He did.

Q. And he said, "If you will comply with your contract and pay the welfare fund, and if your men will join the union, then you will have no further trouble." A. I don't believe he ever mentioned contract.

Q. Well, he mentioned paying the welfare fund? A. That's right, he did.

Q. Which you knew was under the contract. A. He did.

Q. And he told you he would come and talk with your men or send a representative there to join the union? A. You are going too fast for me, you will have to repeat that.

Q. But he did say he would send somebody over there to talk to your men, didn't he? A. He did.

Q. And of course, you knew that the man he referred to was a representative of the United Mine Workers of America, didn't you? A. That's right.

395 Q. And you knew the man coming over there for the United Mine Workers of America was coming for

Testimony of James M. Pennington

the purpose of asking the men to join the union, didn't you?

A. Yes, that's right.

Q. You had no doubt about that? A. No doubt.

Q. So that what the agreement was, two things there, we are going to send a man out over there and see if your men will join the union, and we want you to pay the welfare fund what you owe. You people left the meeting in Middlesboro, and in a day or two, a man did come over to your operations there. A. He did.

Q. And a man talked to your men about joining the union?

A. That's right.

Q. And your men signed cards right there that day to join the United Mine Workers of America, didn't they? A. Yes, sir.

Q. And I'll ask if you didn't sign a card yourself to join it. A. I did.

Q. And those cards that were signed indicated a desire—
strike that. Those cards were the regular form which
396 you were familiar with which indicated a desire of
the individual men who signed those cards that they
wanted to join the United Mine Workers of America. A.
Now what is that?

Q. I'll ask it differently. You had signed cards before? A.
Yes, sir.

Q. And this was a similar card to what you had signed
before? A. Yes, sir.

Q. For membership in the union? A. Yes, sir.

Q. And the cards that the other men that were working
for your company there were the same kind or cards saying,
in substance, I want to become a member of the United Mine
Workers of America, and I want my employer to deduct or
check-off the union dues. A. Yes, sir.

Q. And that is what the men did there in your presence,
and they signed those cards, didn't they? A. Yes, sir.

Q. And you people promised to pay the past payments to
the welfare fund? A. I don't know whether we promised—

Testimony of James M. Pennington

Q. Well, you did over at Middlesboro the day or
397 two before. A. Did I say I promised?

Q. Somebody promised on your part. A. I don't remember.

Q. You don't deny that that agreement was made over there by Mr. Phillips, do you? A. He told us we would have to pay up the welfare and make our men join the union.

Q. And you told him you would pay the welfare fund that day at Middlesboro. A. I don't remember. Mr. Phillips may have, I didn't.

Q. You are not saying he did or he didn't? A. I am not.

Q. Well, pursuant to the arrangement made there regardless of your recollection on that, the man came over and your employees—and I say the man came over, and I mean the representative of the United Mine Workers. A. Yes, sir.

Q. And your men did sign these cards? A. They did.

Q. And the cards were turned over to whom? A. I don't remember who they were turned over to, Ed Daniel, I guess.

Q. Well, somebody representing the United Mine Workers of America received the cards from the men saying they had a desire to join and wanted to join the
398 United Mine Workers of America. A. I would take it they did.

Q. Well, you haven't any doubt about it? A. Somebody got them.

Q. That is correct, isn't it? A. Yes, sir.

Q. And those cards did what you started to do beginning with April or when you opened operations, the last of April and beginning with May, to deduct the dues of the United Mine Workers of America and remit them to the office where they were supposed to go? A. Yes, sir.

Q. And pursuant to what these men asked you to do when they signed the cards themselves that day, your company did begin deducting dues and where your men hadn't been a member, you deducted the initiation dues? A. That I don't know.

Testimony of James M. Pennington

Q. You didn't handle the bookkeeping end of it? A. I did not.

Q. And you people opened up to work there, didn't you? A. We did.

Q. And when did you have your next trouble with any labor with the United Mine Workers of America? A.

399 I don't remember what month it was. I believe it was in the year '55.

Q. This that we are talking about is in what year? A. About the same time.

Q. You didn't have any trouble after that? A. Not after—

Q. And the day those men voluntarily signed the cards in your presence there, did you ever have any trouble with the United Mine Workers of America? A. Not that I remember, no, sir.

Q. Never lost a single day from that day on, did you? A. No, sir.

Q. Never had any trouble of one kind or another? A. No, sir, not that I remember.

Q. Not that you remember. Do you remember who all were present that day when these men voluntarily signed these cards and said they wanted to become members of United Mine Workers of America? A. I probably could name some of them.

Q. Suppose you try. A. Well, there was Fred Burnett.

Q. He was one of your employees? A. He was. Arlow Hutson.

400 Q. Another of your employees? A. I believe Ewell Phillips, Ralph Phillips, Burse Phillips, and I don't remember any more, but anyhow, I do remember them.

Q. All right. Now you had been closed from the time these people come up there which I believe was on April 6th, if my memory is right, until the day these cards were signed, which was April 24th or 25th, wasn't it? A. I think that's about right.

Q. Six from twenty-five leaves about nineteen, and that includes about two Sundays and two Saturdays in there, so

Testimony of James M. Pennington

that would be around sixteen days you were closed down? A. About that.

Q. And that is all the time that you lost? A. That I know of.

Q. There wouldn't be any that you didn't know of would there? A. I don't know.

Q. Can you tell us anything about the scale of wages that you were paying there subsequent to the signing of the agreement in 1955? A. None other than what Mr. Phillips testified a while ago.

Q. You have no independent recollection? A. No, 401 sir.

Q. You worked at the tipple and crusher, didn't you? A. Yes, sir.

Q. And I am talking now about the time this agreement was signed and subsequent there to. A. That was my job practically all the time.

Q. What type of work did you do at the crusher and at the tipple? A. Well, I was more or less of a boss, overseer.

Q. Well, you were operator of it, you worked the crusher along with the men? A. I did.

Q. Didn't you? A. I did, I helped.

Q. In other words, if you were the boss, you were a working boss? A. Well, in our business, bosses work, too.

Q. And that is what you were doing? A. That's right.

Q. And you had signed the agreement. Now then what was Burse Phillips doing? A. Burse was looking after the strip pit.

Q. He was operating a machine on the strip pit, wasn't he? A. He did at times.

402 Q. What kind of machine? A. Any kind that was out there and there was no operator on it.

Q. Would that be a shovel sometimes? A. Sometimes.

Q. And sometimes a cutting machine, what do you call these— A. Bulldozers?

Q. Bulldozers. A. I don't think he fooled with the bulldozers much.

Testimony of Albert Pass

Q. And you and he are the ones in the organization who signed the cards? A. Yes.

Q. You signed the membership cards in the United Mine Workers of America? A. Yes, sir.

Q. Who officially signed the collective bargaining agreement between the union and the partnership? A. I did.

Q. You did on behalf of the partnership? A. Yes, sir.

Q. Now there were three contracts signed, I believe from what somebody stated here today, between the partnership and the United Mine Workers of America. You signed
403 this one in 1955. A. I signed the first one.

Q. 1953? A. 1953.

Q. And you signed the one in 1955? A. Was there one in between there?

Q. Well, yes, there was one in between there. A. Well, I signed two.

Q. You don't recall who signed the other one for the partnership? A. No, sir, I don't.

Q. But you signed two of the agreements? A. Yes, sir.

Mr. Kramer: That's all, Your Honor.

Mr. Rowntree: No other questions. Call Mr. Albert Pass.

ALBERT PASS

called as a witness by and in behalf of the defendants, after having been first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. Rowntree:

Q. State your name. A. Albert Pass.

Q. Where do you live, Mr. Pass? A. Middlesboro,
404 Kentucky.

Q. What is your occupation? A. Secretary-treasurer, District Nineteen, United Mine Workers of America.

Q. How long have you been with District Nineteen? A. I have been in District Nineteen since January, 1941.

Q. Have you served as secretary-treasurer all of that time? A. No, sir.

Testimony of Albert Pass

Q. Or have you served in other capacities? A. Other capacities.

Q. What capacity have you served? A. I served as book-keeper, stenographer, secretary arbitration, and secretary-treasurer.

Q. What other officers of District Nineteen are there other than yours? A. There is the president.

Q. And who is president? A. J. W. Ridings. Vice-president, William M. Edwards.

Q. These were officers back in 1955? A. Yes, sir.

Q. What duties— A. Excuse me a second.

Q. Go ahead. A. I don't recall if Mr. Thompson
405 was president at that time or Mr. Ridings.

Q. What are your duties as secretary-treasurer of this district? A. To keep the records of the finances of the district and to perform any other duties that might be assigned me by the president of the district.

Q. Where does District Nineteen keep its bank account? A. In the National Bank of Washington, in Washington, D. C.

Q. Does it have any accounts in any of the local banks around Middlesboro? A. No, sir.

Q. Then I take it its only account is in the National Bank of Washington? A. Yes, sir.

Q. Was this true in 1955? A. Yes, sir.

Q. Is District Nineteen a self-sustaining district financially? A. No, sir.

Q. Who furnishes additional funds to help sustain District Nineteen? A. We request and have obtained loans up to this time from the International Union to de-
406 fray the expenses of the district.

Q. Now, I am thinking particularly now of 1955, and I'll ask you if all the funds which were transferred by the International to District Nineteen were in the form of loans? A. All of the funds that District Nineteen have received from the International Union have absolutely been considered as loans from the International Union, and of

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course, that money that we do receive or did receive from the International Union was deposited in the District Nineteen treasurer, and we dispensed it according to the expenses necessary. As I understand, as secretary-treasurer of the district, not only does the district expect to pay the money back, but is expected to pay it back.

Q. Do you ever get any funds from the International Union as organizing expenses? A. I believe on occasions. I'm not positive. I don't have the facts at hand, but I believe on occasions we have, yes.

Q. And those are not loans, are they? A. Yes, sir.
407 Q. What position did Ed Daniel and Taylor Maddox occupy with the United Mine Workers during 1955? A. They were representatives, District 19, United Mine Workers of America.

Mr. Kramer: No question about that. We admit they were field representatives.

Q. Do you keep the records of expenses of District 19? A. Yes, sir.

Q. Do you have here today with you any of those records? A. Yes, sir.

Q. I believe we asked you for the ledger sheet showing expenses for the months of June and July, 1955? A. Yes, sir, you did.

Q. And do you have those with you here today? A. Yes, sir, I do.

Q. I wonder if you would look at your sheets, if you have them handy there, during June, 1955, and I will ask you if in those sheets it shows two payments, one to you and one to Mr. Ridings, both marked "organizing" each in the amount of \$1,205.50? A. Yes, sir. On June 27th, 1955 there was a check made payable to Albert Pass for \$1,205.50. And on June 27th, 1955, there was a check made payable to J. W. Ridings for \$1,205.50.

408 Q. All right. Are those marked organizing? A. On the ledger, as I have testified previously, it is listed under the column of organizing which is erroneously, and

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after the names of Albert Pass and J. W. Ridings it is listed as organizer, which is an erroneous entry on the ledger sheet.

Q. What were those funds used for? A. Those funds were used for legal services.

Q. Did you pay those sums to some attorney for legal services? A. Yes. I paid—we paid, rather, the sums to the attorney and secured receipts.

Q. Did you endorse those checks over to that attorney or how did you handle that transaction? A. I cashed one check and Mr. Ridings cashed the other check, and we delivered them to the attorney.

Q. Now I will ask you whether or not that cash was paid over to an attorney who defended those persons charged at Jacksboro in a criminal case involving the alleged beating of John Van Huss?

Mr. Kramer: We object because of its irrelevancy and immateriality, and we think it is not competent for any purpose.

The Court: The objection is overruled.

409 A. Yes, the cash was turned over to the attorneys who represented the people in the case you refer to.

Q. Do you know why those checks were issued? A. Yes, sir.

Q. Why? A. Well, in the first place I did not want to carry that much money over there myself, and I knew Mr. Ridings wouldn't. That is the only reason.

Q. I will ask you to look at the sheet for the date June 22, 1955. A. What was that now?

Q. June 22, 1955. And ask you if there was a disbursement at that time in the amount of \$5,000.00.

Mr. Kramer: I object to this because this is a type of entry that may be on there—we had this in a previous case and your Honor is familiar with it and it was brought out before your Honor and I feel like I can state it to your Honor because your Honor has knowledge of it—to pay attorneys fees, perhaps, and if it is it invades the province

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of attorney and client and not entered under organization, that they do not claim, so it invades the field of attorney and client. It is a privileged entry in going on those books and therefore cannot be introduced in evidence here. That privilege is not waived and it is claimed on behalf
410 of the attorney.

The Court: What is the point, Mr. Rowntree, of this. I remember we had the matter up in the other case but I do not remember the point?

Mr. Rowntree: We are tracing the International funds into the defense of the Jacksboro case, tracing it through the District into the defense of this case to connect the International union with the activities going on.

The Court: Overruled. Go ahead.

By Mr. Robertson:

Q. Do you find there an entry of an expense on June 22, 1955 in the amount of \$5,000 to Mr. R. R. Kramer for legal services? A. Yes, sir.

Q. Do you find an entry on July 8th, 1955—

Mr. Kramer: We are continuing our objection, your Honor.

The Court: Are you objecting to it because of the size of the fee, or what?

Mr. Kramer: Well, do I need to answer that question, your Honor?

The Court: No, sir. Same ruling.

Mr. Kramer: After all, a fellow's got to live.

The Court: Same ruling. Go ahead.

411 By Mr. Robertson:

Q. July 8, 1955 in the sum of \$3,130.13? A. Yes, sir.

Q. Paid to Mr. R. R. Kramer for legal services? A. Yes, sir.

Q. Mr. Pass, were these two sums that I have asked you about totalling \$8,130.13, paid to Mr. Kramer for his services in defending those persons at Jacksboro to which I referred awhile ago? A. I couldn't say that that money was paid to Mr. Kramer for defending those people at Jacks-

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boro. In fact, I did not employ Mr. Kramer or have any knowledge of his employment for defending those people at Jacksboro.

I do know this, however, that we have used Mr. Kramer and his law firm on several occasions to represent District 19, but I could not say that that money was used for that purpose.

Q. You do know that he was hired by the union to represent these defendants? A. No, sir, I do not.

Q. Mr. Pass, do you know Mr. Raymond Phillips? A. I don't know if I know Mr. Raymond Phillips or not.

Q. Let me go back just a minute and ask you in regard to the payment to Mr. Kramer. How did you know to
412 pay that money? A. The president of the District instructed me to write the check. Both checks, in fact. And I did, and signed them.

Q. Did you have anything documentary? A. No, sir, I did not.

Q. For the basis of that entry at all? A. No, sir, I did not.

Q. Did Mr. Ridings have such evidence? A. I don't know.

Q. Was it Mr. Ridings who told you to pay it? A. He did.

Q. Was he the president? A. I believe that, if I am not mistaken, I believe that Mr. Ridings was filling in in the place of Mr. Thomason who was ill. It could have been, of course, when he was representing the president of the District. It could be that maybe Mr. Thomason was there, but I think honestly he was ill and may have been in the hospital at that time.

Q. I believe you said you knew Mr. Raymond Phillips? A. No. I said I don't know whether I know him or not. I met one of those Phillips gentlemen at one time. I don't even know whether I would recognize him if I seen him
again.

413 Q. Do you remember where you met him? A. Yes, sir.

Q. Where did you meet him? A. I met him at the headquarters of District office in Middlesboro.

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Q. What was his announced purpose of being there on that occasion? A. Well, he came in and said he wanted to see me, and he came in and sat down. And he wanted to know how to go about getting his employees in the union. And, of course, I asked him if the company had signed a contract, and he said yes.

I said, well, have they ever signed checkoff cards, and he said no.

I said, well, the first thing will have to be done, we will have to get a field worker over there to sign those men up on authorization cards which will give you permission to deduct their dues and initiation fee. And he said all right.

I then showed him how to—or explained to him how to send the dues in and initiation fees, if any, and the dates that it was to be sent to the district office in accordance with the provisions of the contract.

Q. And he told you on that occasion why he was interested in seeing his men join the union? A. No, sir, he did not. He did not.

414 Q. Did you know why he wanted his men to join the union? A. He did not tell me.

Q. Do you know? A. No, sir, I didn't know, no, sir.

Q. Did you know about these roving bands that were going over the country at that time? A. Well, I read in the newspaper alleging that they were roving bands going over the country at that time, but I have no knowledge of that, except what I read about it.

Q. Do you know that the other officers of District 19 read the newspapers and knew that this was taking place? A. I was never with them when they read it to my knowledge.

Q. You had a good idea why Mr. Phillips was there wanting his men to join the union. Isn't that kind of unusual for an employer to come wanting his men to join the union? A. No, I wouldn't say so, no, sir.

Q. What is the advantage to him to want his men to join the union? A. Well, there is this advantage. When a man gets old, he has to look forward to some kind of livelihood

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and, of course, there is a welfare fund which provides a pension. Most coal miners have large families and they have in most instances no way to pay for their medical services. Most instances, because of the dangers in
415 the mines, they can't obtain life insurance and they, of course, receive a death benefit from the Welfare Fund, and it is not unusual at all.

Q. Of course, he couldn't get these benefits unless he joined the union? A. No, sir, I wouldn't say that. My understanding is that the benefits of the Welfare Fund is either approved or denied by the trustees of the fund.

Q. I go back to my original question and ask you why a man would be interested in joining the union. A. Well, in addition to what I said, a decent standard wage rate, the right to assemble freely, working conditions and vacation pay, portal to portal, and proper protection under the social security laws of our country, and workmen's compensation coverage, unemployment insurance coverage, matters of that kind.

Q. Well, all those things, those are things which the employer furnishes, are they not? A. Provided that he has some assistance in seeing that the employer furnishes them, yes, sir.

Q. Can a man assemble freely without joining the union?

Mr. Kramer: Your Honor, I object to that. It is irrelevant for any purpose in this lawsuit.

416 The Court: Overruled.

A. Well, before we had a union they couldn't, I can answer it that way.

By Mr. Robertson:

Q. How about now? We are not talking about 1890. We are talking about in 1955. A. Well, me representing the people that belongs to the union, as far as I know they do now, yes, and then in '55, yes.

Q. It is the general impression of the people in the industry that in order to get these welfare benefits, they must

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join the union? A. I don't know what the impression of the people in the industry is. I don't know.

Q. Well, it was your impression just a few minutes ago, was it not? A. No, I didn't say that.

Mr. Kramer: He didn't say that.

The Witness: I didn't say that, no, sir.

By Mr. Robertson:

Q. I will ask you again, Mr. Pass, why would these employers come to you wanting their men to join the union unless they wanted to keep mobs off of their back?

Mr. Kramer: Your Honor, I object to that as being an argument. I don't think that calls for a question of
417 fact. He is asking this man to express an opinion of why somebody else does a certain thing. I think it is incompetent. It is argumentative, and I think it calls for a conclusion. I think it is improper and I object to it.

The Court: Gentlemen, I don't understand the procedure. Is this gentleman called under Rule 43 or is he called as a witness—

Mr. Robertson: He is under subpoena, your Honor.

The Court: Is he called under Rule 43? Are you putting him on under Rule 43 or are you putting him on as your witness? If so, then the objection is well taken. You can't cross-examine your own witness.

Mr. Rowntree: If your Honor please, we think he is an officer of the union—

The Court: I say, is he being called?

Mr. Rowntree: Yes.

The Court: Well, the Court has no announcement of that. Are you calling him under Rule 43 as an officer of the union?

Mr. Rowntree: We do, yes, sir.

The Court: All right, I will let you examine him then under that rule. Go ahead.

Mr. Kramer: Your Honor, may I be heard just a moment?

The Court: Yes.

418 Mr. Kramer: I recognize the difference between a person who is called as a witness under Rule 43 and

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the ordinary calling as a witness.

The Court: Yes.

Mr. Kramer: He is called then as a representative of the opposing party?

The Court: That is right.

Mr. Kramer: Under 43, as your Honor indicated, but I do not think that gives the right to argue with the witness to ask him to express conclusions. You may have the right to lead him. There are certain of those rules that you may have the right to under 43.

The Court: That is right. You cannot argue with the witness.

Get me Rule 43.

Mr. Kramer: I have it right here.

The Court: I will read what can be done and what cannot be done under Rule 43.

Mr. Kramer: I don't have it marked, but your Honor will have no trouble finding it.

The Court: Under sub-section (b) of Rule 43 it is stated:

"Scope of Examination and Cross-Examination. A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief."

You are entitled to ask him leading questions. If he were not called under that rule, you could not ask him leading questions. You have heard what other differences there are in calling a witness under Rule 43 and the regular way as your own witness.

All right.

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By Mr. Robertson:

Q. Do you remember the question?

A. No, sir, I don't.

Mr. Robertson: Read the question, please.

(Reporter read questions as follows: "I will ask you again, Mr. Pass, why would these employers come to you wanting their men to join the union unless they wanted to keep mobs off of their back?")

The Court: Well, "mobs off their back", is that
420 the part?

Mr. Kramer: Yes, your Honor.

The Court: We will strike that—

Mr. Robertson: I will—

The Court: We will strike that part of the question out.

Mr. Robertson: Let me reframe the question.

The Court: All right, you may do so.

By Mr. Robertson:

Q. Is it your testimony that the visit of Mr. Phillips and his party to your office, that that had no connection with the mobs at that time? A. My testimony is that Mr. Phillips only stated what I told you that he stated. He didn't mention anything about any mobs or anybody else, nobody.

Q. At that time there would it have even been necessary for him to mention any mobs for you to realize— A. If I had known—

Mr. Kramer: Just a moment. Would it be necessary for him to do something in order for you to realize? I do not think that is proper interrogation. I have no objection to him asking what this witness may know. He can cross-examine him, lead him, but when you get to these conclusions, I think it is objectionable under any rule of evidence and I do object to it.

421 The Court: Read the question to me.

(Question read.)

The Court: Sustained. Don't state your conclusion, Mr. Robertson. Just ask him the question. You put in a conclusion and then a question in the same sentence and that isn't

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proper. I will let you lead him and you can ask him, but don't state your conclusions.

By Mr. Robertson:

Q. Mr. Pass, does District 19 have a welfare department?

A. A welfare department? No, sir.

Q. Does it have a compensation department? A. Yes, sir.

Q. But it has no welfare department? A. That is exactly right. I might add the compensation department at this time is defunct.

The Court: Mr. Robertson, I will let you ask him the question that you undertook to ask him, provided you put it in the form of a question rather than a conclusion. I don't mean to cut you off on that question, so there will be no misunderstanding about the ruling of the Court.

Mr. Robertson: Yes, sir. May I have a conference?

The Court: Yes, sir.

Mr. Robertson: I have no further questions.

422

CROSS EXAMINATION

By Mr. Combs:

Q. Mr. Pass, in reference to the question that counsel asked you about the benefits of the Welfare Fund being payable only to members of the union, and you answered, I think, no. A. That is right.

Q. Now these funds, the welfare benefits as far as you know, do they apply to operators, employees who have not signed the contract? A. The regulations that I have observed refers to miners, to the best of my recollection, and it is my understanding that people other than members of the United Mine Workers of America can and have received benefits from the Welfare Fund, provided that they are in compliance with the rules and regulations of the trust fund.

Q. The question I asked, Mr. Pass, was whether or not the welfare payments are made to employees of operators who have not signed the contract? A. I can't recall of anyone in that category, but my understanding is that they do.

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Q. They pay to non-signatory operators? A. Not non-signatories.

Q. That is the question I am asking. A. No, sir.

423 Q. You misunderstood the question. I want it clear. I asked you whether or not that benefits from the Welfare Fund were paid to employees of operators who had not signed the contract. A. No, sir. No, sir.

REDIRECT EXAMINATION

By Mr. Robertson:

425 Q. Is there wholesale unemployment in that area up in there now? A. Considerable unemployment.

Mr. Kramer: Wait a minute. I object to that, Your Honor. Now we are limited to a period that wound up December 31, 1958.

The Court: Well, now that is ordinarily correct. There would be no damages, any damages after that period.

Mr. Robertson: Of course we take the position that a conspiracy, once it starts, is a continuing thing, Your Honor, and anything such as unemployment, chronic employment, now which exists would go to show the result of this conspiracy during the period which we are talking about in this suit.

The Court: Read the question to me.

(The question was read by the reporter.)

Mr. Kramer: May I state this, Your Honor, our position is that of course the sole purpose is to show as a private litigation—it is not an anti-trust suit by the government—

The Court: That has no bearing on the damage question involved in this suit, but it may have a bearing on the results of—or the alleged result of the alleged conspiracy. I overrule the objection.

426 By Mr. Robertson:

Q. And I believe you answered that, did you not?

A. Not yet. What did you say?

Mr. Robertson: Would you read the question and the answer?

Interrogatories Propounded to U.M.W.

Mr. Robertson: That's all.

The Court: Now, members of the jury, unless this alleged unemployment is connected up with the alleged conspiracy, that answer, that testimony would have no bearing in this case. It has to be connected up before it would have any bearing on any issue in this case.

428 Mr. Rowntree: I would like to read some interrogatories here, if Your Honor please.

430 Mr. Rowntree: We have a stipulation filed February 2, 1961, "It is hereby stipulated that the papers attached hereto are true and correct copies of the answers of the defendant United Mine Workers of America to the interrogatories propounded by the plaintiffs, as Set Number 2 and the Exhibits thereto as the same were filed on April 1, 1958, in the United States District Court," in the Osborne case.

Mr. Kramer: "In entering into this stipulation, the cross defendant, United Mine Workers of America, does not admit the competency, relevancy or materiality in this case, No. 3431," the present case, "of this stipulation and the papers attached hereto, but expressly reserves the right to object to the introduction thereof upon the ground of competency, relevancy or materiality if and when such stipulation and papers are offered in evidence in the case.

"It is further stipulated that this stipulation with the papers attached thereto shall remain under seal until offered in evidence upon the trial of this case and its contents shall not be revealed prior to such date to anyone except to the parties to this action and their attorneys of record.

431 The Clerk: Here are those interrogatories.

Mr. Kramer: I have them. Go ahead.

Mr. Rowntree: (To Mr. Combs) Do you want to raise a question now?

Mr. Kramer: Just a minute, if I may look at them.

Interrogatories Propounded to U.M.W.

Mr. Combs: There is one interrogatory we objected to. It is No. 31, I believe. That the Court overruled us on that objection. I am not too sure, the way it shows here. But when it comes to that I will appreciate it if he did not read that interrogatory until we see whether or not we renew the objection. Aside of that, I see no objection to reading the interrogatories.

The Court: All right.

Mr. Rowntree: I will start with this Question 3 on page 3. "Kindly file all correspondence relating to the request for and the disbursement of the money mentioned in the answer to Interrogatory No. 29 of interrogatories propounded by the plaintiffs, Set No. 1, or relating to disbursements mentioned in the reply to interrogatory No. 1 or 2 above."

Answer: "Attached hereto, and marked Exhibit 432 No. 1, is all the correspondence relating to the request for and the disbursement of the money mentioned in the answer to Interrogatory No. 29 of Set No. 1, and relating to disbursements mentioned in answer to Interrogatory No. 1 and No. 2 of Set No. 2."

Attached are a series of letters. I will read the first one, dated June 16, 1954:

"Memorandum to National Bank of Washington

"From: John Owens, Secretary-Treasurer.

"Enclosed is check for \$3,000.00. Please credit this amount to the checking account of District 19, United Mine Workers of America, Middlesboro, Kentucky, and send them receipted deposit slip."

I think we had better read another one, dated July 9, 1954, from Mr. Ray Thomason, president, on the stationery of the United Mine Workers of America, District 19, Middlesboro, Kentucky, to Mr. John Owens, Secretary-Treasurer, United Mine Workers of America, Washington, D. C.

433 "We have a fixed expense in this district of approximately \$11,765.00 per month. In addition it takes approximately \$1,500.00 per month to operate our Compensation Department. Two attorneys are employed in

Interrogatories Propounded to U.M.W.

the Compensation Department and, as you know, the services of Mr. Turnblazer are used in administrative work in our Welfare Department and he also does considerable work for District 50.

"An annual assessment of \$1.00 per year is levied against our working members to carry on the work of the Compensation Department. Our working membership for the month of May was 10,447. Our non-working membership averages approximately 5,500. Therefore, we find ourselves unable to operate on our fixed income and we find it necessary to ask you at this time to advance District 19 a loan in a lump sum or make us a monthly allowance.

"This arrangement should be made effective June 1, 1954. We have permission from the International Executive Board to levy our \$1.00 assessment for our Compensation Department and we intend to place that assessment during the month that we feel that we may have peak employment. That, of course, will alleviate the necessity of requesting money to operate the Compensation Department. In the meantime we will attempt to cut our current expenses
434 wherever practical and not impair our organization.

"Trusting that you can see your way clear to grant this request, I am

"Sincerely yours, Ray Thomason, president."

There are a series of letters after that with reference to certain funds transferred from the account of the International Union to the account of the district.

Dated May 27, 1955, one of these letters states—this is from the secretary-treasurer to National Bank of Washington:

"Gentlemen: We are enclosing check in the amount of \$4,000.00, which is to be deposited to the account of our District No. 19, Middlesboro, Ky.

"Please send receipted deposit slip direct to that office."

The next letter, June 9, 1955, secretary-treasurer to National Bank of Washington:

"Enclosed is check in the amount of \$5,000.00 made pay-

Interrogatories Propounded to U.M.W.

The Reporter (Reading): "Q. Is there wholesale unemployment in that area up in there now?

"A. Considerable unemployment."

able to Albert Pass, Secretary-Treasurer of our District No. 19, Middlesboro, Ky.

"Will you please deposit this to that account and send the receipt to the office at Middlesboro, P. O. Box No. 116?"

The next letter, June 9, 1955, from secretary-
435 treasurer to Mr. James Ridings, international board member, District 19, Middlesboro:

"As requested by you over the 'phone yesterday afternoon, and approved by President Lewis, I am depositing check in the amount of \$5,000.00 to District No. 19 account in the National Bank of Washington, Washington, D. C. I am asking the bank to send you a receipt for it.

"President Lewis has advised us to charge this as a loan to District No. 19."

The next letter, June 14, 1955:

"Memorandum to Mr. John L. Lewis from Earl E. Houck.

"Today in a long distance telephone conversation with Mr. James W. Ridings, Acting President of District 19, I learned that the District is temporarily in sore financial straits, without sufficient funds to carry on its current affairs and discharge current obligations.

"In order that it may maintain current status in all of its financial affairs and thus discharge promptly its administrative obligations incurred for District needs and purposes, I recommend, at Acting President Ridings' request, that a loan in the amount of \$5,000.00 be advanced to District 19
436 and that the proceeds of such loan be promptly transmitted, with the understanding that the District recognizes it as a loan subject to repayment in due course."

June 15, 1955, the next letter:

"Memorandum to Earl R. Houck from Secretary-Treasurer John Owens."

Apparently it deals with the same transaction.

Interrogatories Propounded to U.M.W.

Now turning back to the interrogatory—

Mr. Kramer: Of course, we understand, your Honor, only the letters read are in this present record and the only interrogatories read.

The Court: Yes, sir.

Mr. Rowntree: Interrogatory No. 10, at the bottom of page 4:

"Were the amounts involved in said disbursements paid out by the International Union at one time for each year or at various times, and please give the dates of the various payments."

"As to the answer of this Defendant to Interrogatory No. 29 of Set No. 1, the loans were made at the following times and in the following amounts."

I think it is agreed these are loans coming from the International Union to District 19. Is that correct?

Mr. Kramer: Yes, that is correct.

437 Mr. Rowntree: And these amounts are included in that answer in Interrogatory No. 29 of Set No. 1.

"\$3,000—June 16, 1954.

"\$3,000—July 14, 1954.

"\$6,000—August 4, 1954.

"\$3,000—October 25, 1954.

"\$2,000—December 28, 1954.

"\$3,000—January 26, 1955.

"\$3,000—February 23, 1955.

"\$4,000—April 27, 1955.

"\$4,000—May 26, 1955.

"\$5,000—June 9, 1955.

"\$5,000—June 15, 1955.

"\$4,000—August 24, 1955.

"\$3,000—September 29, 1955.

"\$4,000—October 31, 1955.

"\$4,000—November 30, 1955.

"\$1,000—December 15, 1955.

"\$2,000—January 3, 1956.

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"\$1,500—February 27, 1956.

"\$1,500—March 29, 1956.

"\$2,000—May 1, 1956.

"\$2,500—May 31, 1956.

"\$3,000—June 29, 1956.

438 "\$2,000—July 2, 1956.

"\$3,000—July 30, 1956.

"\$5,000—August 31, 1956.

"\$3,500—September 26, 1956.

"\$5,000—October 31, 1956.

"\$3,000—November 30, 1956.

"\$2,000—December 28, 1956."

459 Mr. Rowntree: May it please the Court and ladies and gentlemen of the jury, we were dealing yesterday with sums of money paid from International to District 19 in response to a question in Interrogatory No. 29.

The next question is this Interrogatory No. 1:

"With respect to the answer of the defendant International Union to Interrogatory No. 29 of Set No. 1 of the interrogatories propounded by plaintiffs, please state whether or not the amount mentioned with respect to the years 1954, 1955 and 1956 constituted all the money (other than welfare benefits) that was disbursed by the International Union in those years on account of Union activities in the area covered by District 19, whether the disbursements were to or through District 19 or otherwise. If not, please give the other amounts disbursed by the International Union, the dates of such disbursements, and to whom paid."

Answer: "The amounts mentioned in this Defendant's answer to Interrogatory No. 29 of Set No. 1 did not constitute all the money disbursed by the International Union in the area covered by District 19. In addition thereto, the following amounts of money were disbursed:

460 "\$4,000.00—8/4/54—Ck #37077, payable National Bank of Washington.

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"\$10,000.00—6/28/55—Ck #43377, payable Albert Pass, Secy-Treasurer.

"\$1,000.00—10/6/55—Ck #45207, payable Albert Pass, Secy-Treasurer.

"\$1,500.00—10/17/55—Ck #45496, payable Albert Pass, Secy-Treasurer.

"\$13,500.00—10/17/55—Ck #45498, payable Albert Pass, Secy-Treasurer.

"\$6,000.00—11/10/55—Ck #45858, payable Albert Pass, Secy-Treasurer.

"\$10,000.00—8/1/56—Ck #51035, payable Albert Pass, Secy-Treasurer."

The letter exhibited, dated June 28, 1955, addressed by Secretary-Treasurer to Mr. Albert Pass, Secretary-Treasurer, District 19, Middlesboro, Kentucky:

"In compliance with the request of Mr. James W. Ridings of June 27, 1955, we are today depositing Ten Thousand Dollars (\$10,000.00) for credit to the account of District 19, UMWA, maintained in The National Bank of Washington, Washington, D. C. This deposit represents funds transmitted to District 19 for organizing purposes. Receipt will be mailed to you from the Bank."

461 We next will read the deposition of Mr. John L. Lewis.

Mr. Kramer: May I make a statement to the Court with reference to the deposition? Mr. Lewis will probably be called as a witness in person. This deposition is taken under Rule 43(b), if I am correct, so, of course, our scope of examination was so much limited that there is little cross examination here. It was not under Rule 20, your Honor.

The Court: Yes, sir.

Mr. Kramer: So the Court understands.

Mr. Rowntree: The deposition of John L. Lewis, taken on behalf of defendants and cross-plaintiffs, Tampa, Florida, 18 and 19 of January, 1961.

(Mr. Rowntree and Mr. Robertson read the deposition as follows:)

*Deposition of John L. Lewis***"JOHN L. LEWIS**

produced and sworn as a material witness, testified as follows:

"DIRECT EXAMINATION

By Mr. Rowntree:

"Q. What is your name, sir? "A. John L. Lewis.

"Q. Where do you reside, Mr. Lewis? "A. I am resident in Washington, but I am a citizen of the State of 462 Illinois.

"Q. Are you one of the plaintiffs in this case which was brought by the Trustees of the United Mine Workers of America Welfare and Retirement Fund? "A. Yes.

"Q. And you are one of the Trustees on that Fund? "A. Yes.

"Q. Are you Chairman of that Board of Trustees? "A. Yes.

"Q. How long have you been Chairman of the Board of Trustees of the Fund? "A. Perhaps twelve years.

"Q. Would that include the period before the 1950 contract? "A. Partially.

"Q. You were also president of the United Mine Workers of America International Union? "A. Formerly, yes.

"Q. When did you become President of the International? "A. Vice President, 1917. Acting President, 1919. President in fact, 1920.

"Q. And you were President of the International Union from 1920 up until the time of your resignation? "A. Yes, sir.

"Q. And when was the effective date of your resignation?

"A. January, 1960.

463 "Q. 1960. Are you presently President Emeritus of the International Union? "A. Yes.

"Q. Are you still on the same salary basis as you were as President of the International Union? "A. No. I have a pension.

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"Q. You have a pension from the Union. During the time that you have been on the Board of Trustees of the Welfare Fund did you receive compensation as such Trustee from the Fund? "A. No.

"Q. The pension that is paid to you by the Union currently, is that from the Pension Trust established by the Union for its own employees? "A. Yes.

"Q. It is not paid out of the United Mine Workers of America Welfare and Retirement Fund?"

"A. No.

"Q. In other words, the Union has a separate pension arrangement for its own employees and officers besides and beyond any Welfare and Retirement Fund under contract with operators? "A. The benefits of the United Mine Workers Welfare and Retirement Fund are covered by the provisions of the joint contract in the industry and applies only to the employees of the signatory companies; and the agents of the United Mine Workers—employees, clerical, executive, or field—are not covered by that plan, and the organization has set up a pension plan covering its own employees; I mean the United Mine Workers of America—covering its employees.

"Q. And that latter pension plan is the one that you drew your pension from? "A. As a former employee of the United Mine Workers of America I am eligible for a pension under that plan.

"Q. I just wanted to clarify that because there are two pension arrangements there that I didn't want to have confused.

"Now, Mr. Lewis, is the International Convention of the United Mine Workers of America the highest official body of the International Union? "A. It is the supreme authority in the Union."

"Q. Does it customarily meet every four years? "A. By constitutional requirement it meets every four years now;

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but of course special conventions can be constitutionally inaugurated or held when required in the opinion of
465 the International Executive Board.

"Q. But you have held conventions in the years 1948, 1952, 1956, and 1960; is that correct? "A. Well, I don't follow your arithmetic but every four years.

"Q. Who has the supreme authority in the International Union when the Convention is not in session? "A. The Executive Board. The International Executive Board of the United Mine Workers of America.

"Q. Now most of the activities of the Union, particularly with respect to negotiations with operators on collective bargaining, occur when the International Union Convention is not in session; is that correct? "A. Yes.

"Q. Now, does the Convention have any way of knowing what the International Executive Board and the International Officers of the Union have done in between conventions, or do they have any privilege of approving such activities? "A. If negotiations are complete or are in existence during the time the Convention is in session, it will come before the Convention. It frequently has in the history of the organization.

"In the meantime, however, the constitutional provisions covering such matters provide for proper attention
466 to be given to it by the officers of the Union, by the International Executive Board, and by an International policy Committee, which the Convention sets up as an Advisory Board to the Scale Representatives and to the qualified officers of the Union, representative of all districts.

"Q. If negotiations are completed and a contract
467 is signed after a convention session has terminated and before the next convention session, does the next convention have any way of passing upon the activities of the officers in that interim?

"A. The conventions of the future exercise no function because the preceding convention has designated its authority passed on that to the Policy Committee which is

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created according to the provisions and is representative of all districts. The Policy Committee acts in the meantime as an intermediate body between the conventions and the Executive Board and the elective officers.

"Q. Well, does the next succeeding convention have any way of knowing what has transpired in the meantime? "A. A full report in detail is made to the convention about the work of the organization during the preceding four years and it is subject to their approval, subject to the Convention's approval.

"Q. The reports that are made by the officers and the Executive Committee, do they give full, correct information to the Convention of what has transpired? "A. It is certainly given correct information; and 'full' is a relative term. They certainly give all pertinent facts, but, of
468 course, do not crush the Convention delegates with excessive detail.

"Q. These reports are prepared to present to the next succeeding convention? "A. Which reports?

"Q. The reports that you mentioned, of the activities of the officers and Executive Committee? "A. They are prepared in advance of the convention date which is fixed by the constitution.

"Q. Are they prepared by a duly authorized officer of the union? "A. Yes.

"Q. These reports are set forth in the Minutes of the Convention? "A. Yes. The record of the convention.

"Q. And the action of the convention in passing on those reports is reflected in the Minutes of the Convention? "A. I have always assumed so, that they truly reflect it.

"Q. The International Convention maintains complete minutes of what transpired at each convention? "A. Well, the convention employs a public stenographer to take down what requires a stenographer, and, to the best of my knowledge and belief, they are verbatim records of what transpires in the convention.

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469 "Q. And they are kept to maintain a record of what did transpire and what action the convention did take on various matters? "A. Well, they are printed in book form, like the books in front of you and are circulated to the membership. Most of it is published in the United Mine Workers Journal and a full and complete distribution is made, and they are available for record.

"Q. Now, on Interrogatories which we addressed to the Union, Set Number 1, Interrogatory Number 15, we asked for the filing of Convention Minutes of the Conventions of 1936, 1948, 1952, and 1956, and I believe that there was a limited number of those copies, and I believe that Mr. Kramer has those here; and I would like to ask that they be marked as Exhibit Number 1 to this deposition. I don't believe that they have actually been filed under the Interrogatories."

Mr. Rowntree: We would like to have those marked at this time, and then we will let counsel have them back. And I would suggest that we file only Volume One of each year.

Mr. Combs: That is satisfactory. As a matter of fact, some of those records are so far back, and we don't have but one copy, and we would like to have it back.

470 The Court: All right.

Mr. Kramer: You are only going to file just the Volume One?

Mr. Rowntree: Volume One. We offer as Exhibit 28 Volume One of the proceedings of the Constitution Convention of the United Mine Workers of America for 1936.

(Exhibit 28 marked for identification and filed.)

Mr. Rowntree: Offer as Exhibit 29 the proceedings of the International Convention, United Mine Workers of America for 1948.

(Exhibit 29 marked for identification and filed.)

Mr. Rowntree: We offer as Exhibit 30, proceedings of the International Convention, United Mine Workers of America for 1952.

(Exhibit 30 marked for identification and filed.)

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Mr. Rowntree: We offer as Exhibit 31, proceedings of the International Convention, United Mine Workers of America for 1956.

(Exhibit 31 marked for identification and filed.)

(The reading of the deposition was continued.)

471 "Q. Mr. Lewis, a part of the International Officers report to the 1956 Convention is entitled United Mine Workers Journal, and I refer to page 289 and 290 of the 1956 Convention Minutes, Volume Number 1, —"

Which would be Exhibit 31.

(The reading of the deposition was continued.)

"The first paragraph of that portion of the report states: 'The United Mine Workers Journal, official publication of the United Mine Workers of America, has the primary function of being the direct link of communications between the Union and the membership. As such, the Journal makes every effort to report fully and faithfully all official UMWA activities by the International Union, the district and the local unions. In addition, the Journal reports activities of the UMWA Welfare and Retirement Fund and the Anthracite Health and Welfare Fund. The Journal also attempts to keep the membership informed on outstanding new developments of our industries, both anthracite and bituminous.'

"Mr. Lewis, is that a correct statement of the purposes and functions of the Journal?

"A. That is a correct statement of the policy and intent of the organization, to have the Journal report in the fashion thus described.

472 "Q. Mr. Lewis, this is a somewhat involved case. As we go along, I would like to state our contentions as to which specific questions are addressed to you. It is for the benefit of counsel as well as yourself.

473 Mr. Rowntree: Well, it is almost necessary to do that right at this time. Our first series of questions

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here is with respect to a contention that we point out to the witness here, that is that we make in this case a contention that the conspiracy charged was formed with the making of the 1950 National Bituminous Wage Agreement, that the reaching of an understanding between the union and the large coal operators in 1950 is indicated by the contrast in bargaining before 1950 and after 1950.

Now I go on and ask him a question.

474 "Q. Now, as general background, Mr. Lewis, do you recall that the 1952 wage increase was brought before the Wage Stabilization Board for approval? "A. I do not now recall it as a fact nor recall the details, as these succeeding new wage contracts through the years become dim in retrospect.

"Q. Yes, sir, "A. And if it is of record that that was the case, I don't question the record.

"Q. Now this paragraph that I am referring to there on that page 106 states — this being a letter addressed to the Economic Stabilization Administrator by Mr. Welly K. Hopkins, General Counsel, UMWA—he states in this letter that Mr. Moses, President, Bituminous Coal Operators Association, had filed a statement in support of a requested review of the Wage Stabilization Board's recent ruling on the bituminous coal contract of 1952, and he states:

" "This letter, in behalf of the Union, the United Mine Workers of America, is to affirm and supplement the
475 presentations made in Mr. Moses' statement."

"I believe, Mr. Lewis, that pages 79 through 97 of that volume contain that statement of Mr. Moses that had previously been filed.

"Now I will ask you does not this statement filed by Mr. Moses, there at pages 79 through 97, does that not give a condensed history of the bargaining between the Union and the Operators in the period before the 1950 contract?

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476 "A. I presume that it purports to do that, yes. As to whether or not it does, I don't know.

"Q. The reports of the International officers and Executive Committees, as found in the various Convention Minutes, would amplify and show the correctness of any statements made in this summarization on those particular pages? "A. I do not know that it would. I have had no opportunity to digest this document in relation to other documents filed or statements by counsel for the United Mine Workers to the governmental agency.

"I presume that basically it gives to the government tribunal full information on the wage contracts as required from both parties by the governmental agency, and antecedent to possible approval by the government of the contract.

"I have no keen recollection of any of the details which might be or which might not be contained in this record.

"Q. The record would have to be searched and studied in order to be fully familiar with all of these details. And isn't it true that some of these conventions involve pretty long reports by the International officers to the various Conventions? "A. Quite voluminous."

477 Mr. Rowntree: I would like to read at this time, your Honor, this condensed version of the bargaining between the coal companies and the union before 1950.

The Court: All right.

Mr. Kramer: You are reading from the 1952 Minutes?

Mr. Rowntree: Reading from 1956 Minutes, Exhibit 31, pages 79 and 97.

Mr. Kramer: Your Honor, because the question that we want to raise will be applicable to many instances, I think we can shorten this proceeding if we might in the absence of the jury take up a question that is presented here.

The Court: All right. Let the jury be excused temporarily.

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(The jury was excused from the courtroom and the following proceedings had in the absence of the jury.)

The Court: All right.

478 Mr. Kramer: Your Honor, the particular statement that counsel seeks to introduce at the moment, your Honor, is one by a man by the name of Moses who was connected with one of the alleged—

(Remarks of the Court off the record.)

Mr. Kramer: The paper that they purport to read at this time, or a portion, comes from the Journal of International Conventions, is a statement which they say that Harry M. Moses, who was president of the Bituminous Coal Operations Association, wrote to Mr. Lewis.

Now, the members of the Bituminous Coal Operations Association, at least some of them are, are alleged to be conspirators in this case.

We do not think, your Honor—first, object to it—that they can introduce statements of an alleged co-conspirator whether he is a party to the lawsuit or not—it is really immaterial to this question—but in this instance his company was not a party, is not a party to this lawsuit although he is claimed to be a conspirator. And before statements made by an alleged co-conspirator can be admitted in evidence the conspiracy itself must be proven.

Then the statements of co-conspirators can be introduced to show intent or purpose and scope or something of
479 that sort. But there is not in this instance, your Honor, proof of the existence of a conspiracy. And until—under the decisions of the Supreme Court—until that proof has been established this type of evidence is inadmissible and it cannot be connected—if your Honor cares for citations, I have them here—it cannot be connected by going ahead and putting in the alleged statements of claimed co-conspirators and later establishing the conspiracy.

The conspiracy, outside of the statements of the alleged conspirator, must first be shown before this evidence becomes even competent, and it is not a question in this in-

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stance of connecting up by later proof like in some fields, but in this particular field you cannot introduce any statement of an alleged co-conspirator. It is pure hearsay. And while the conspiracy rule takes out—rules of evidence of conspiracy testimony takes out the hearsay rule after the conspiracy has once been established. And we object, your Honor, for that reason.

* * * * *

482 The Court: Is the Moses statement contained on page 79?

Mr. Rowntree: Start at page 79 and it goes on over several pages.

In other words, the purpose of this, your Honor, is to present the history of bargaining before 1950 between the big coal companies and the union in its most condensed form that we can possibly present it.

These pages give a concise statement of what happened in the bargaining between the major companies and the union before 1950. This is a background to the conspiracy that we are talking about in this case. It shows the sharp contrast in the relations of the major coal companies and the union before and after 1950, the year that we say this conspiracy started.

The Court: Well, you are familiar with the rule to which Mr. Kramer alluded, namely that unless and until the conspiracy is established, declarations of alleged conspirators are not binding on the co-conspirators.

483 What about this rule as applied to the Mose statement? What do you say about that?

Mr. Rowntree: Well, if your Honor please, we think, particularly on this statement here, as Mr. Lewis stated in response — as was read into the record awhile ago, the union has written a letter to an official of the government stating that it affirms and supplements this presentation by Mr. Moses. In other words, they have adopted it for an official matter.

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The Court: Who wrote that?

Mr. Rowntree: That was signed by Welly K. Hopkins, general counsel of the United Mine Workers of America.

The Court: To whom did he write the letter?

Mr. Rowntree: He wrote it to the Economic Stabilization Administrator.

The Court: He said that he adopted this?

Mr. Rowntree: That is right. He "affirms and supplements the presentation here made".

492 Mr. Kramer: Of course, it is our position that the rule cannot operate so as to permit this type of statements until, as the Supreme Court says, the conspiracy has been otherwise established, and we don't think it has.

But the second proposition, another ground of objection. This particular letter here purports to have been addressed to a governmental agency for the purpose of getting the governmental agency to approve something.

Under the very recent case that I know Your Honor is familiar with, the Noerr case, you are not guilty
493 of a conspiracy or of violating the law by appealing to or seeking some favorable result.

The Court: That's right. In other words, you can go to your legislators, Congressmen, and your Senators and people who meet in Nashville and say, "Now we want this act passed," or "We don't want it passed," and you don't violate any law by doing that. That is what the Noerr case holds.

Mr. Kramer: Yes, but it goes further than to any legislative bodies; it goes to administrative body as well.

The Court: That was a fight between the railroads and the truckers, and you are familiar with those fights. You know they get rather heated at times. Now the railroads, or the truckers, claimed that the railroads conspired to have the state legislature to pass certain legislation detrimental to the truckers.

Mr. Kramer: And to get the governor of certain states—

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The Court: Of Pennsylvania, I believe, and the Court said that wasn't a violation of the anti-trust laws. Of course, that is sound law, isn't it, Mr. Kramer?

Mr. Kramer: Yes, that is sound law, Your Honor.

494 The Court: All right, bring the jury back.

(Thereupon, the jury returned to the courtroom, and the following proceedings were had).

The Court: Members of the jury, counsel is about to read to you certain statements allegedly written or made by a Mr. Moses. Now Mr. Moses purported to represent some coal companies in making those statements. Whether he did or whether he did not will be a question of fact for the jury to decide. But there is a well-established rule of law that a declaration or a statement made by a third party or made by a co-conspirator is not competent as evidence, and cannot be considered by the jury, the tryer of the facts, unless and until first a conspiracy is established; second that the alleged statement was made in furtherance of the conspiracy.

Now, unless a conspiracy is established in this case, and unless the jury finds that the UMW and one or more of the coal companies named were a part of this conspiracy, and unless the jury finds that the statements that counsel is about to read as evidence, or purported evidence, in this record were made in furtherance of the alleged conspiracy, then the jury will not consider this evidence for any
495 purpose in the record.

All right now, with that explanation, the objection is overruled.

Mr. Kramer: I don't know whether counsel has stated, but it is admitted that this was written to a governmental agency?

Mr. Rowntree: Yes, the Economic Stabilization Administrator.

496 "Historically, there have arisen problems in labor relations that are peculiar to this industry. In the last decade, failure of the collective bargaining process to

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function has inevitably led to seizure and operation by the Federal Government.

"The first instance of this was in 1943. This seizure lasted for five months and twelve days from May 1, 1943 to October 12, 1943.

"Twenty days later, on November 1, 1943, the industry was seized again. This seizure lasted for six months, from November 1, 1943, to May 31, 1944. This seizure was not terminated in the southern producing area until June 21, 1944.

"There was a third seizure of certain coal mines that became involved in supervisory strikes during September and October 1944.

"There was a fourth seizure, involving certain mines from April 10, 1945, until June 3, 1945.

"The fifth seizure occurred when the coal industry was seized on May 21, 1946. This period of seizure and operation by the Federal Government continued for more than thirteen months until June 30, 1947. A more detailed recital of the events of this last seizure period may be found in the review of post-war wage contract negotiations

497 which is attached herewith as Exhibit 1."

The attachment commences on page 87.

498 "Before the Economic Stabilization Administrator, Economic Stabilization Agency.

"Background of the Negotiation of the National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952.

"Post-War Wage Contract Negotiations in the Bituminous Coal Industry.

"A proper perspective of the negotiation of the 1952 Amended Agreement in the bituminous coal industry requires a consideration of the course of the industry's post-war wage contract negotiations.

"On March 2, 1946, the United Mine Workers of America

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served notice of the termination of the National Bituminous Coal Wage Agreement of 1945. Negotiations for a new contract were carried on during that month and thereafter with an Operators' Negotiating Committee representing the management side of the industry.

"The negotiations failed to produce agreement and a nation-wide coal strike started on March 30, 1946. This strike continued for 52 days until May 22, 1946, when the Federal Government seized the coal mines under the authority of the War Labor Disputes Act.

499 "On April 12, 1946, the Secretary of Labor conferred separately with the operators and the union in an effort to achieve a settlement. His efforts continued over several weeks without success.

"On April 22, 1946, the Director of the United Nations Relief and Rehabilitation Administration appealed for coal to save Western Europe from communism.

"As May 10, 1946, approached, stockpiles became depleted, steel furnaces were "banked, electric power was curtailed, and almost all phases of the nation's industry were approaching a virtual stand-still. The number of unemployed due to the strike mounted to over 1,500,000 and many of the nation's cities faced black-outs after first resorting to brown-outs. A conference of the parties with the President of the United States was scheduled for May 10, 1946, but, three hours before the conference, the union offered two-week truce. This truce was accepted by the operators but was rejected by some of the union locals.

"The majority of the mines resumed operation; the Solid Fuels Administration for War imposed priority controls upon the coal produced during the period.

500 "On May 16, 1946, the President of the United States made the following statement:

" "Mr. Lewis and Mr. O'Neill came to see me again at 10 o'clock this morning. They told me that after further consultations with their committees last night, they had come to the conclusion that negotiations in the coal mine dispute

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had completely broken down and that further negotiations would be useless. I, therefore, proposed arbitration. I asked them to consider this proposal carefully and report back to me with their decision at 5:30 o'clock, Eastern Standard Time, this afternoon.

"Some 35 or 40 joint meetings have been held between the operators and the miners without agreement. The country is in desperate straits as a result of the recent strike of the coal miners. Coal must be got out of the ground. The whole life of the nation has suffered from the coal strike and will suffer increasingly if there is another stoppage.

"This proposal was accepted in part by the operators and rejected by the union.

"On May 21, 1946, the President of the United States issued Executive Order 9728 directing the Secretary 501 of the Interior to seize the coal industry. The Secretary issued a mine seizure order effective at 12:01 a. m., May 22, 1946, and appointed Vice-Admiral Ben Moreell as Deputy Coal Mines Administrator. This governmental seizure and operation of the coal industry was to continue for 13 months. This action was not without precedent, for governmental seizures of the coal industry had occurred previously in the years 1943 and 1944.

"The Executive Order of the President of the United States contained the following preamble.

"WHEREAS after investigation I find and proclaim that there are interruptions or threatened interruptions in the operation of the mines producing bituminous coal as a result of existing or threatened strikes and other labor disturbances; that the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be duly impeded or delayed by such interruptions; and that the exercise, as hereinafter specified of the powers vested in me is necessary to insure the operation of such mines in the

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502 interest of the war effort and to preserve the national economic structure in the present emergency."

"On May 22, 1946, the Secretary of the Interior and the president of the union began wage contract negotiations.

"The Coal mines were again idle on May 27, 1946, following the expiration of the two-week 'truce.'

"On May 29, 1946, an agreement between the Secretary of Interior, J. A. Krug, and the United Mine Workers of America was executed. This agreement, commonly referred to as the Krug-Lewis Agreement, provided for an increase in wages of \$1.85 per day and established for the first time a welfare and retirement fund into which it was required to pay 5 cents per ton on all coal produced for use or sale. The agreement continued the 9-hour day with time and one-half for all time worked over 7 hours each day, and over 35 hours each week. It added provisions relating to a mine safety code, union safety committees, coverage under workmen's compensation laws, and unionization of supervisory employees. The annual vacation pay was increased
503 from \$75 to \$100.

"On May 31, 1946, the Krug-Lewis Agreement was approved by the National Wage Stabilization Board.

"In July and September of 1946, attempts were made to stimulate negotiation between the union and the operators looking toward negotiation of a contract that would terminate Government seizure, but these proved of no avail.

"On October 21, 1946, the United Mine Workers of America served on the Secretary of the Interior a 10-day notice of a request for a negotiating conference. This was procedure avowedly leading to termination of the Krug-Lewis Agreement, and was based on allegation of breaches of contract and significant changes in Government wage policy. The controversy centered around pro-rata vacation payments and measurement of the tonnage to which the welfare and retirement fund payments applied.

"The Secretary denied any contract breaches or any term-

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ination right; however, representatives of the Coal Mines Administration met with representatives of the United Mine Workers on November 1, 1946. On November 7, 1946, these discussions were recessed until November 11, 1946.

504 "On November 9, 1946, the President of the United States ordered an immediate abandonment of all governmental controls over wages and salaries, and virtually all governmental controls over prices. He stated:

"Today's action places squarely upon management and labor the responsibility for working out agreements for the adjustment of their differences without interruption of production."

"The Secretary of the Interior met first with the operators and then with the president of the union, on November 13, 1946, in an effort to get the parties together in negotiations.

"On November 14, 1946, the Secretary of the Interior proposed a procedure for negotiations between the operators and the union whereby Government possession would end in 60 days.

"The President of the United States, on November 15, 1946, issued the following statement:

"Secretary of the Interior Krug delivered to the president of the United Mine Workers, yesterday afternoon, a written proposal containing the details of a plan under which the operators and miners could negotiate their differences and the mines would remain in operation.

505 "I am thoroughly familiar with this proposal and I consider it eminently fair to both workers and operators." "

507 Mr. Rowntree: May it please the Court and ladies and gentlemen of the jury, reading the paragraph where we were before:

"On the same day, November 15, 1946, the United Mine Workers of America rejected the proposal of the Secretary

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of the Interior, and served notice of termination of the Krug-Lewis Agreement as of 12 o'clock midnight, November 20, 1946. The Attorney General of the United States advised the President of the United States and the Secretary of the Interior that no right of termination existed."

* * * * *

We will skip through the rest of the Krug-Lewis Agreement period. Skip to the second full paragraph, page 91:

"* * * the President of the United States proclaimed 'the cessation of hostilities of World War II, effective
508 twelve o'clock noon, December 31, 1946.' This meant that the power of the Government to operate the coal mines would cease on June 30, 1947, under the termination provision of the War Labor Disputes Act."

* * * * *

"Negotiations between the operators and the union looking toward a wage contract that would become effective upon the expiration of government seizure (when the War Labor Disputes Act terminated on June 30, 1947) began on April 29, 1947."

509 Skip a paragraph dealing with the passage of some law and a paragraph about a vacation period.

"After many sessions dealing with a multitude of issues, the negotiations culminated on July 8, 1947, in the execution of the National Bituminous Coal Wage Agreement of 1947, which became effective on July 1, 1947. This contract provided for a \$1.20 per day wage increase, reduction of one hour in the workday from the wartime nine hours to eight hours, and establishment of the United Mine Workers Welfare and Retirement Fund with the payment increased from 5 cents per ton to 10 cents per ton. The detailed basis of the pension payments and welfare benefits were to be worked out by the trustees.

"The trustees were unable to agree on the basis for pension payments and on March 12, 1948, the president of the union announced that the operators had 'dishonored' the contract. A nation-wide coal strike began.

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"On March 18, 1948, the Director of the Federal Mediation and Conciliation Service met separately with the operator trustee and the union trustee to explore the issues involved in the dispute.

"Since the neutral trustee had resigned on January 31, 1948, the operator trustee petitioned the United States District Court for the District of Columbia on March 20 for the appointment of a successor neutral trustee and for the disposition of any other matters that might arise in the dispute.

"The Interstate Commerce Commission ordered a 25% reduction in coal-burning passenger train service on March 21.

"On March 22, 1948, the Director of the Federal Mediation and Conciliation Service proposed the appointment of a fact-finding board to a joint meeting of union and operators' representatives.

511 "The next day, March 23, 1948, the union rejected the Director's proposal, and the President of the United States issued Executive Order 9939 creating a Board of Inquiry under the national emergency provisions of the Labor-Management Relations Act, 1947. The Board consisted of Judge Sherman Minton, chairman, Dr. George W. Taylor, and Mark Ethridge.

"On March 24, the Interstate Commerce Commission ordered a twenty-five per cent reduction in coal-burning freight train service.

"The Board of Inquiry held hearings in Washington, D.C., on March 26, March 29, and March 30, and filed its report with the President of the United States on March 31, 1948.

"The report stated in part as follows:

'Up to date, more than 35,000,000 tons have been lost due to the stoppage. There is today approximately a fifteen-day overall supply of coal, but since coal is not evenly distributed there are places entirely out of coal today. Rail-

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roads have curtailed services and some carriers will be in dire straits within a week or two . . .

“ . . . We find the stoppage was not independent—”

512 I will not read that paragraph.

“On April 3, 1948, the President of the United States requested the Attorney General to seek a national emergency injunction, expressing the opinion that the strike, if permitted to continue, would imperil the national health and safety.”

Skip a paragraph.

“Meanwhile, on April 10, 1948, the management trustee and the union trustee agreed upon United States Senator Styles H. Bridges to be the new neutral trustee of the Fund. On April 11, 1948, Senator Bridges submitted a pension resolution which was adopted by a 2-1 vote of the trustees.

“Litigation to determine the propriety of the Bridges resolution was instituted by the management trustee in the United States District Court for the District of Columbia.

“Negotiations for a new contract were commenced on May 18, 1948, but could not be carried to a conclusion until the pension issue was resolved. After numerous negotiating sessions dealing with a great many issues, matters appeared to be at a hopeless impasse on June 15, 1958.

513 “On that date, the Director of the Federal Mediation and Conciliation Service notified the parties to meet with him on July 17. Such meetings occurred both on June 17 and June 18. However, nothing was resolved, and the Director so reported to the President of the United States.

“On June 19, 1948, the President issued Executive Order 9970 creating a Board of Inquiry to report on the coal controversy by June 23. Those named to the Board were David L. Cole, chairman, E. Wight Bakke, and Waldo F. Fisher. The operators testified before this Board on June 21.

“The next day, June 22, the District Court upheld the propriety of the Bridges resolution. Later in the day, both union and operator representatives appeared before the

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Board, stated that the court decision had clarified the situation, and accepted the Board's suggestion that negotiations be resumed, with progress reports to be made to the Board. That night, and during the next two days, negotiating sessions were held. Substantial agreement on contract terms was reported to the Board of Inquiry late on June 24.

On June 25, 1948, the National Bituminous Coal Wage Agreement of 1948 was executed; it provided for an increase of \$1.00 per day in wages and an increase of 10 cents per ton in the Fund payment, raising it from 514 10 cents per ton to 20 cents per ton.

"The coal mines owned by various steel companies (commonly referred to along with out consumer-owned mines as 'captive' mines) were struck for seven days because of a dispute over the union shop issue. These companies filed unfair labor practice charges and the General Counsel of the National Labor Relations Board instituted injunction proceedings in the United States District Court for the District of Columbia. A stipulation providing for further processing of the litigation was agreed to by the parties and approved by the court. The steel companies then executed the Agreement and the strike terminated."

Skip the rest of that paragraph dealing with the findings.

"The term of the 1948 Agreement was marked by two national strikes and it was to be twenty months before another contract was to be executed."

"On March 11, 1949, the union declared a memorial period in which coal production East of the Mississippi was to cease from March 14 to March 28 in protest of the appointment of Dr. James Boyd to be Director of the U. S. Bureau of Mines. During this period about 62,700 railroad employees were laid off.

515 "From June 13, 1949, to June 20, 1949, the union, purporting to exercise its 'contractual options,' observed a 'stabilizing period of inaction.'"

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"In the meantime, negotiations for a new contract had been instituted. These negotiations were marked by controversy over the clause that permitted unrestricted 'memorial periods' and the clause that stated the contract covered the employment of the workmen only so long as they were 'able and willing.' When no agreement was reached prior to expiration of the contract, the union instituted a three-day workweek in the bituminous coal mines East of the Mississippi River. This continued until September 16, 1949, when it was announced that the Fund was forced to suspend the payment of pensions and other benefits. This precipitated an all-out national strike which continued until November 9, 1949, when the union ordered the men back to work until November 30, 1949.

"Thereafter, the national strike was resumed. On various dates around the turn of the year, the coal operators filed unfair labor practice charges against the union. The General Counsel of the National Labor Relations Board issued a complaint and instituted injunction proceedings in the United States District Court for the District of Columbia. An injunction was issued.

516 "The events of these months are best summarized by the report of the Board of Inquiry created by Executive Order 10106 issued by the President of the United States on February 6, 1950. Those named to the Board were David L. Cole, chairman, W. Willard Wirtz and John T. Dunlop. Portions of this report are quoted hereafter:

"On February 6, 1950, the President created this Board of Inquiry to report to him on the current labor dispute in the bituminous coal industry. Executive Order 10106, issued that day, directed the Board to present its report on or before February 13, 1950.

"The critical importance of the bituminous coal industry in our national economy is widely understood and needs no elaboration here. Labor relations in this industry have attracted wide public attention in recent years. Two Boards of Inquiry, one in March and the other in June 1948, have

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highlighted for the public certain important aspects of these relationships.

517 “ ‘The Operators are organized for collective bargaining purposes into three main groups. The first of these includes northern and western commercial operators located largely in the States north of the Ohio River, or west of the Mississippi. These Operators are represented by the National Bituminous Coal Wage Conference. Their production is approximately 55 per cent of the national total. The second group, also commercial operators, in the States south of the Ohio, particularly in West Virginia, Kentucky and Tennessee, are represented by the Southern Coal Producers' Association. These operators account for a quarter of the national production. The last group, the so-called “captive mines,” are owned or managed by companies which consume their production, mainly in the steel industry.

“ ‘United Mine Workers of America is the collective bargaining agent for the employees in all three groups. This union has had agreements with these operators for many years.

“ ‘Negotiations for a new national agreement have been in progress intermittently for more than 8 months. They have received considerable publicity. It was the most recent break-down of these negotiations, followed by a widespread stoppage of work in the mines which led to the crea-
518 tion of this Board of Inquiry.

“ ‘The National Bituminous Coal Wage Agreement of 1948, negotiated during the tenure of a Board of Inquiry, carried forward and modified the 1947 agreement. On April 21, 1949, the Southern Coal Producers' Association gave the union notice of termination effective at the expiration of the agreement on June 30, 1949. On May 13, 1949, the union gave notice of termination covering coal mines operated by United States Steel Corporation and its subsidiaries, and on June 14, 1949, similar notices were served on all other signatory companies.

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"Following these notices of termination of the 1948 agreement, a series of bargaining conferences were begun between the representatives of the United Mine Workers and the three principal groups of operators. The Southern Wage Conference, held at Bluefield, West Virginia, commenced on May 25, 1949; the "captive" conference was begun on June 13, 1949, at Philadelphia; the northern conference convened at White Sulphur Springs, West Virginia, on June 22, 1949.

"The Southern Wage Conference met for a total of 44 days and was terminated by the operators on November 2, 1949. The Southern Coal Producers' Association nonetheless dispatched a telegram, dated November 25, 1949, offering to resume negotiations with the Union. The Union did not reply.

"Negotiations between the Union and representatives of certain captive mines were conducted at 11 meetings between June and the end of September, 1949. Thereafter informal conversations were held a number of times. These discussions were allowed to lapse with the understanding that either side might call the other by telephone and arrange further meetings.

"The Northern Conference met a total of 27 days of sessions prior to October 21, 1949, when these negotiations were terminated by the operators. They were resumed in February 1950.

"The Federal Mediation and Conciliation Service, which had been closely following all these developments, arranged a conference among all the parties on October 7, 1949. A subsequent conference, called for November 9, 1949, failed to materialize when the representative of the union indicated he could not attend. On many other occasions the Director of the Service met with the parties in diligent effort to effectuate a settlement of this controversy.

520 "Throughout the period of these negotiations there has been sporadic and unstable production. On June 8 the union ordered a "brief stabilizing period of

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inaction," and from June 13 to 20 little coal was mined. On July 5, 1949, the union placed into effect a 30 day work-week. From September 19 to November 9 there was a general cessation of work in the mines. On December 5, the 3 day week was again instituted. The Christmas holiday period and complete stoppages in Illinois and late in the eastern district created further uncertainties regard production.

"In this period since the termination of the 1948 contract, there has been frequent resort to court actions and other legal proceedings affecting collective bargaining over the terms of a new agreement."

Skip the rest of that paragraph.

"This series of lawsuits has brought into question many provisions of the last agreement of the parties. In these proceedings there is further reflection of the break-down of genuine collective bargaining in this industry.

521 "On January 25, 1950, the northern Operators wrote the Union offering to negotiate a new contract "on the basis" of a number of designated conditions. The union accepted the invitation, stating it would meet "to negotiate in good faith, without stipulation, qualification, or commitment." The negotiations which followed on February 1 and February 2, 1950 broke down without any effective bargaining as the parties debated "conditions precedent to bargaining." The operators withdrew.

"On January 31, 1950, President Truman sent telegrams to the parties proposing the resumption of 'normal' production for a period of 70 days and the establishment of a fact-finding board authorized to make recommendations. The operators accepted the proposal, but on February 4 the United Mine Workers rejected the proposal. The President appointed the present Board of Inquiry, under the Labor Management Relations Act, 1947, following the general stoppage of work on February 6, 1950."

Skipping a number of paragraphs about the condition of the country at the time. Next to the last paragraph.

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"On February 11, 1950, the President of the United States received the report of the Board and, expressing an opinion that the strike, if permitted to continue, would imperil
522 the national health and safety, directed the Attorney General to seek to enjoin the continuance of the strike.

"The United States District Court for the District of Columbia issued a temporary restraining order. Following the granting of the order, the president of the union issued instructions for the union members to return to work. However, there was very little, if any, compliance with these instructions. The Government moved for a citation for contempt of court against the union and its president. The proceedings resulted in a verdict of not guilty.

"Negotiating sessions continued with the Director of the Federal Mediation and Conciliation Service and the Chairman of the Board of Inquiry in attendance.

"On March 2, 1950, the Interstate Commerce Commission ordered further cuts in train service on coal-burning railroads, reducing freight traffic to 60 per cent of normal and passenger traffic to 35 per cent.

"On March 3, 1950, the President of the United States requested the Congress to pass legislation authorizing the seizure of the coal industry."

523 Skip the rest of that about that. Down to middle of the page, the paragraph starting:

"Two days later, on March 5, 1950, the operators and the union executed the National Bituminous Coal Wage Agreement of 1950."

That is all we read from these sections. Page 18.

(The reading of the deposition was continued.)

"Q. Now, that covers the period before 1950, and we would like to take up later on in a little while, the period after 1950; but first I would like to consider certain language in the 1950 contract, how that language happened to be in there—speaking particularly about the Union Security clause and the Welfare Fund provisions of the 1950 con-

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tract, and the similar language in the contracts of 1947 and 1948."

"Q. Mr. Lewis, a principal duty that you had to perform as International President was to negotiate for collective bargaining contracts, is that not right? "A. I had general supervision over those negotiations under the constitution and the authority granted the President's office."

524 "Q. At some time in the period of 1947 up to, say, the contract of 1952, you did realize, did you not, that the law would not permit a welfare fund to be used exclusively for the benefits to Union members? "A. I had a general concept that that was true, certainly.

"Q. And also did you not realize sometime in that period that a welfare fund, run by the Union itself, would also be illegal? "A. No.

"Q. Was it your concept all the way through that the Welfare Fund could properly be operated by the Union? "A. Certainly.

"Mr. Combs: Let's get this clear just a minute, Mr. Rowntree. You are saying 'the Welfare Fund' or 'a Welfare Fund.' To what are you referring?

"Mr. Rowntree: I am talking about the United Mine Workers of America Welfare and Retirement Fund as established in the 1947 contract and also as established in the 1950 contract.

"Mr. Combs: I don't think Mr. Lewis understood your question.

525 "Mr. Rowntree: All right, sir.

"By Mr. Rowntree: . . .

"Q. Would you like to correct the answer? "A. Would you repeat your question?

"Q. At some time in this period of time we are talking about . . . between 1947 and 1952, did you realize that the operation of the United Mine Workers of America Welfare

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and Retirement Fund by the union itself would be illegal? "A. Well, as to what the final arrangement of the Welfare Fund, in its contractual provisions that gives it life, refines all the questions involved into express provisions of an agreement.

"I could not undertake to say now what my varying views were as I was required to modify a position or found that I could expand a position. It gets down into the atmosphere of negotiations and there is a great deal of flexibility in those negotiations and they are prolonged oftentimes over a long period of time, and I do not retain the details of those in my mind.

"Q. Was it your desire that union members exclusively participate in the Welfare Fund benefits? "A. Not necessarily, no. The employees of the signatory operators.

526 "Q. Was it your desire that the union actually run the Welfare Fund as closely as it could? "A. Naturally it is parallel to the case of the Metropolitan Club in New York, for instance. It extends its benefits only to its own members. The Union was not primarily concerned with the well-being of non-members of the union, because there were a hundred and fifty million of them, more or less, and we couldn't undertake to devote our lives to their interests.

"Q. You are talking about all the citizens of the country? "A. I'm talking about the population of the country, yes.

"So the thing was refined down to the employees of the negotiating and ultimately signatory operators.

"Now, as a matter of fact, membership in the union is not a basic requirement to receive the benefits of the Welfare Fund.

"Q. Now, let's go into that. I believe that the 1947 contract first established the Welfare Fund between the Union and the Operators. It established a Welfare Fund. And there had been a preceding arrangement with Mr. Collison,

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representing the Government, during the period of the Government's seizure of 1946, with respect to a Welfare Fund.

"Is that your recollection?"

527 "A. I do not follow or confirm your usage of dates and terms.

"The Welfare Fund first came into being in the industry on May 29, 1946, by an agreement with the Department of the Interior of the United States who were operating all the coal mines in the United States.

"The Fund was finally activated; and finally the coal operators induced the government to return the mines which they have previously yielded to the Government, and the negotiations properly fell between the representatives of the coal operators, who were the employers of the industry, and the United Mine Workers of America.

"Q. That arrangement with the operators was first in 1947? The contract? "A. If you say so. I do not confirm it because I would have to check the date.

"Q. Refer to page 68 of the 1948 Convention Minutes, Volume Number 1."

Mr. Combs: That was phrased as a question by Mr. Rowntree. Would you mind reading his answer to that.

Mr. Rowntree: All right.

(The reading of the deposition was continued.)

528 "A. Supplementing, I might say that Mr. Collison was the first Trustee representing the employers, the employer being the United States of America. He was an officer and agent of the Department of the Interior. He was appointed to that place by Secretary Krug of the Department of the Interior. He served for a time as Trustee. He received the stipend of \$35,000 a year for his services, as Trustee, from the Fund.

"He demanded compensation of that magnitude. The Fund, through my objection, refrained from agreeing to this, saying it would not do so without an opinion from the Attorney General of the United States that it would be legal for the Fund to pay Mr. Collison this stipend.

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"Mr. Collison later filed such a legal opinion, signed by the Attorney General of the United States—who happened to be Mr. Thomas Clark, now a member of the Supreme Court.

"Q. Did he sustain the paying of the compensation? "A. He sustained, in toto, believe it or not—the demand
529 for a \$35,000 salary, and thus the Union rate for Trustees was fixed in the Welfare Fund by the Attorney General of the United States, in behalf of the Government of the United States which was the employer of all coal miners at that time.

"Q. Then in 1947 there were negotiations with the operators after the government seizure terminated? "A. I would so assume—without, again, confirming your arbitrary dates.

"Q. Yes, sir. I refer you to page 68 of that volume there and ask you if that correctly shows the negotiators for the 1947 contract?

"Q. Without being able to give this serious analysis and to digest it in the manner that it should be, I will aver that it seemingly does what you suggest."

Mr. Rowntree: The page reference there, quoting:

"A conference was held on June 27, 1947 at the Carlton Hotel, Washington, D. C. Representing the mine workers: John L. Lewis, John O'Leary, Thomas Kennedy, John Owens. Representing the industry: Benjamin Fairless, George Humphrey, George Love, Harry Moses, Charles O'Neil."

(The reading of the deposition was continued.)

"Q. Then on the next page, Mr. Lewis, there starts
530 off the 1947 contract, and on page 72, at the top of the page, it seems that the royalty payable by the operators to the Welfare Fund was ten cents a ton under that contract. "A. That is in accordance with my recollection, yes.

"Q. And that language on that page also shows the naming of the Trustees—Mr. Van Horn for the operators, and yourself for the Union—these parties to name a third Trus-

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tee.

"Is that your recollection from this language here?

"Do you recall that those two individuals—

"A. I think I do.

"Q. —did serve as Trustees? "A. That is correct.

"Q. I believe Mr. Murray was named as third Trustee.

"A. Mr. Thomas Murray, of New York.

"Q. And, Mr. Lewis, I notice on that same page and on the top of the next page, the language in the portion of the contract dealing with benefits that refers to membership in the United Mine Workers of America—I notice about ten lines up from the bottom of that last full paragraph on page 72, it states:

531 "Including the making of any or all of the foregoing benefits applicable to the individual members of the United Mine Workers of America and their dependents."

"And also in the next paragraph dealing with the setting aside of a Pension Fund it states, 'Providing for pensions or annuities for the members of the United Mine Workers of America or their families or dependents and such other persons as may be properly included as beneficiaries thereunder.'"

"Language referring to membership in the Union was included in the 1947 contract?"

"A. Only in the restrictive sense that the United Mine Workers of America were not authorized and did not represent the interest of any employees in the industry that were not members of the United Mine Workers of America and were not negotiating for non-members of the Union, as they had no authority and were without jurisdiction. And naturally, language of this character would be used under the circumstances. But you will note the words, 'and any other persons properly qualified.'"

"Q. All right, sir, and do you recall that under this 1947 contract a dispute between you and Mr. Van Horn arose?"

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"A. I recall that there were sometimes differences of position on policy.

"Q. And I believe that the history of that—the question arising between you and Mr. Van Horn—is shown
532 in the reports of the officers, in the 1948 Convention Minutes; and, for the benefit of counsel, I would like to refer to the pages that we will rely on with respect to that dispute."

Mr. Rowntree: I will just refer to a little bit of this. We have already seen two or three paragraphs of it on the other reading.

I would like to read or maybe summarize the first letter in this series, a letter from Mr. Lewis to Mr. Fairless and Mr. Humphrey, dated January 20, 1948, in which he states that the agreement of 1947, the National Bituminous Coal Wage Agreement of 1947 created a welfare and retirement fund.

The next paragraph, he states that Mr. Van Horn, representative of the other employers, has consistently refused and continues to refuse to agree to any of the pending proposals which seek to designate such pension fund.

Next paragraph, a dispute has continued for several months. A dispute has impaired and prevented the activation of the welfare and retirement fund. The fund is an integral part of the national agreement and the dispute runs to the integrity of the contract. The dispute is more acute
533 by the resignation of the third trustee, Mr. Thomas E. Murray. The agreement provides the disputes, if national in character, shall be settled by the use of free collective bargaining.

The next paragraph: "The facts require" * * * "me as president of the United Mine Workers, to hereby officially notify you of the existing and unresolved dispute and to call upon you as joint principals to the agreement to settle and determine said dispute" * * * "by free collective bargaining."

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534 (The reading of the deposition was continued.)

"Q. Now I believe that the 1948 contract left the Welfare Fund provisions unchanged from the 1947 contract; referring to pages 145 and 146 of the 1948 Convention Minutes."

535 "Q. My question is that 1948 contract did not change the provisions of the 1947 contract with respect to the Welfare Fund? "A. With respect to the tonnage rates or with respect to what?

"Q. Any portion of the provisions with respect to the Welfare Fund? "A. If the record so avers, I accept."

536 (The reading of the deposition was continued.)

"Q. Now, Mr. Lewis, we contend that there were some five different means adopted, starting in 1948, to tie the Welfare Fund benefits to Union membership and to tie the operation of the Welfare Fund to the Union.

"In the first place we contend that an effort was made in 1948 to exclude from participation in Welfare Fund benefits those individuals who were part time workers in the industry and, through exclusion of those individuals from Union membership by way of increasing the initiation fees.

"In the first place, we refer to page 347, 1948 Convention Minutes, at the bottom of the page. We refer to that resolution Number C16, which carries over to page 348."

Mr. Rowntree: This resolution reads:

"Whereas, since we have the Health and Welfare Fund established, we have thousands of people that are not practical coal miners that are drawing money from this fund. They are such as farmers and various types of industry that they have been connected with other than the coal mines, but still are drawing from this fund. They are drifting into the mines from the farms and various industry throughout the country and securing jobs around truck mines. They are working a few months,

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establishing their membership, and from there they drift to the Health and Welfare Fund. In reality they are not actually practical coal miners; be it

"Resolved, that this convention go on record in increasing the initiation fee to at least \$100. We feel that by doing this, that it would correct this unjust situation; be it further

"Resolved, that in order for anyone to be eligible to draw Health and Welfare Fund money that their initiation fee be paid up in full and that the constitution as it now reads be observed 100 per cent by the local union officers who fill out forms for the people who are drawing money from the Health and Welfare Fund.

"The Committee concurs in the spirit of this resolution and recommends that Section 7 be amended to read as follows:

538 "Unless a dispensation has been granted in accordance with Section 2 of Article 9, the initiation fee shall be fifty dollars, but no applicant shall be eligible for initiation until he has started to work for a mine under the jurisdiction of a local union. Where application for membership is made, applicants for membership must pay the full amount of the initiation fee into the local where application is first made, the full amount to be paid within five months or the first payment shall be forfeited. The initiation fee shall be divided as follows: twenty dollars to be retained or forwarded to the local union, and thirty dollars forwarded to the International Secretary-Treasurer."

"Secretary Mitch moved the adoption of the recommendation. The motion was seconded."

Mr. Combs: Counsel, are you through with that particular resolution?

Mr. Rowntree: On page 348. Let's see. The action taken on page 356, the recommendation of the committee was adopted.

Mr. Kramer: There is some confusion.

Mr. Combs: That is what I wanted to point out. I am

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sure counsel wants to get this straight. You will find on page 352 that particular resolution was defeated. 539 Quite a few were passed, but that particular one was defeated.

Mr. Kramer: The adoption deals with something else.
The Court: All right.

Mr. Rowntree: The adoption—

Mr. Combs: On page 352, where it was put to a vote.

Mr. Rowntree: The counsel is right, the statement there. The motion is lost and the delegate has the floor. At that point a delegate, Bill Lewis, Local Union 5767, District 29, stated:

“Mr. Chairman, I rise to bring before you the necessity which now exists in the local union, and I also arise to wholeheartedly support the recommendations of the committee to raise the initiation fee to fifty dollars to those who for fifteen long years we tried to get into the Mine Workers organization.

“Yes, I wholeheartedly favor the increased initiation fee to the amount of fifty dollars.”

I think that is the proposal in there, in that resolution, is to make the local union keep twenty dollars and the—

Mr. Combs: May it please the Court, without interrupting counsel, we are perfectly willing to stipulate 540 what the constitution provides about initiation fees, and what the local union is to take. What counsel is reading there are simply speeches made by delegates.

The Court: We don't want to hear any of those if we can avoid them.

Mr. Combs: There were twenty-six hundred of those delegates.

Mr. Rowntree: Will counsel stipulate on what action was taken with respect to the initiation fee?

Mr. Combs: The action of the 1948 convention is incorporated in the 1948 constitution, and we certainly would be glad to supply that to counsel, and that sets out speci-

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cally what the initiation fees are and what the convention did do.

Mr. Rowntree: The original proposal was to split this initiation fee twenty dollars to the local and thirty dollars to the International, and that failed. This proposal here—

The Court: Mr. Combs, can you tell us what they are?

Mr. Combs: Yes, I think I can.

The Court: All right, let's have that.

Mr. Combs: It won't take but a second. I don't think there is any dispute about it, and certainly if he
541 wants to get into a debate about what he thought they ought to pay and who should keep what—

Mr. Rowntree: One of these—

Mr. Combs: Are you trying to make a proposal?

Mr. Rowntree: One of these proposals was adopted.

Mr. Combs: Yes, one was adopted.

Mr. Rowntree: It is immaterial which one.

The Court: Get the figures when you can.

Mr. Combs: I don't have the '48 constitution with me.

The Court: You will get them and give them to Mr. Rowntree?

Mr. Combs: I will be very happy to.

The Court: All right.

(The reading of the deposition was continued.)

"I take it these minutes correctly reflect the discussion and the actions taken with respect to that resolution? "A. I agree the convention increased the initiation fees fifty dollars, yes.

"Q. In the second place, it is our contention that a system was established whereby the Union officers at the local and district level, would process Welfare Fund ap-
542 plication papers.

"In this connection we refer to pages 350 and 353 of these minutes, wherein delegates who were local secretaries talk about their added responsibilities in processing Welfare Fund papers.

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"Do you recall that the local and district officers did have a responsibility in processing Welfare Fund applications?"

543 Mr. Kramer: We will stipulate that insofar as they were called upon they did that. They did not process all applications. Mr. Lewis explains that. They did process some applications, and we do not deny it. They did not process all applications.

Mr. Rowntree: Well, we will go on with that on the stipulation.

The Court: All right.

(The reading of the deposition was continued.)

"Do you recall that the local and district officers did have a responsibility in processing Welfare Fund applications?" "A. Yes. It was a voluntary service. The only source that the information could be gotten respecting our members and contribution to the cost of administration of the Welfare Fund—this expense was borne by the United Mine Workers and for no other reason.

"Q. In the third place we contend that the Welfare Fund recipients were required, commencing in 1948, to retain their union membership. Here we refer to page 423 and 424 of these same convention minutes of 1948.

"Do you recall that?"

544 "A. I recall that, and I say again that it is merely an incidental matter of administrative convenience, because the United Mine Workers of America were not equipped to offer similar services to non-members of the organization. The agents of the United Mine Workers of America were only required to serve members of the United Mine Workers of America, whose agents they were.

"Q. Mr. Lewis, I will read this statement, by you, which appeared on pages 423 and 424 of that volume.

President Lewis: May the Chair say that there is no question of raising revenue involved in this recommendation of the committee.

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545 Mr. Rowntree: In order to make it clear, Your Honor, I will have to read the recommendation of the committee here. It is from the committee.

* * * * *

Mr. Rowntree: "Retired members and disabled members receiving aid and also members temporarily unemployed through no fault of their own shall pay one dollar per month dues to be forwarded by the local union to the International Secretary-Treasurer, and a record of all such members filed with the District Treasurer."

Going on.

(The reading of the deposition was continued.)

"It is merely a question of retaining some sort of legal relationship between the beneficiary and the man who is not working and the organization itself. It is a question, in view of the numerous statutory provisions and the punitive provisions of the Taft Hartley Act, whether a man who pays nothing in the form of dues for an extended period of time to the organization could maintain a legal relationship and be adjudged a legal member. The one dollar represents the utmost minimum to which the organization could reduce those dues and still maintain

546 that definite, tangible relationship. It is not a revenue raising matter. It is not any desire to take any money away from these people but in the consideration of this subject and the inquiry made, we thought it was the most practical and the safest arrangement that could be recommended to the convention to meet the requirements of the situation.' "A. The word 'legal' is used in a restrictive sense there, as appertaining to the organization, and the joint relationship with the operating end of the industry as expressed by the contract; and was merely to define the relationship and to qualify the representatives of the United Mine Workers of America to act as agents in processing these claims for benefits, when all the men who processed hitherto had been members of the United Mine Workers. It did not require anyone to become a member in order to

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receive benefits. But in the service of these benefits, the conditions would arise ad interim through the years. They qualified the agents of the United Mine Workers in that respect. The words 'legal relationship' were used, in its entirely restricted sense, under the constitution of the United Mine Workers of America. No other reason.

"Q. In the fourth place, Mr. Lewis, we contend that in 1948 the system was established empowering the
547 International officers to pass on the membership of applicants for Welfare Fund benefits. And we refer here to pages 342 and 343, 1948 Convention Minutes.

"Do you recall, Mr. Lewis, that an International Executive Committee committee—"

Mr. Rowntree: The committee under the committee.

(The reading of the deposition was continued.)

"—was appointed to pass on the membership of applicants for Welfare Fund benefits? "A. Only in the interest of providing—of expediting applicants for admission ad interim the International Executive Board meetings, and to qualify scores of thousands of men who came in and rejoined the union, and there was a question of fact involved as to whether or not they were employees under the contract of the industry.

"This committee was created. It had nothing to do with anything except the convenience of the members and the granting of complete equity and full protection to the applicants if they were justified in rejoining the organization.

"I think counsel will understand that, under the constitution of the United Mine Workers, a man must
548 have employment in the industry or in the United Mine Workers of America; in order to join the union we will not take into the United Mine Workers a man who was not employed in the industry or had no relationship to the United Mine Workers; and that was an important factor.

"Mr. Combs: Does Counsel have any objection to his

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reading into the record at this place the provision of the constitution relating to that matter?

"Mr. Rowntree: I have no objection.

"Mr. Combs: Mr. Lewis, if you will read the italicized print there, which is the provision Mr. Rowntree is talking about.

"The Witness: 'Article 9 of the constitution. Duty of Officers. Section 30. The committee recommends that a new paragraph be added to section 30;—this is the constitutional committee of the convention reporting to the convention its recommendations—that is in parentheses—'new paragraph be added to section 30' as follows: The board is authorized and empowered with the rights or original jurisdiction, to investigate and determine the ques-
549 tions of membership or as affecting individuals who, through neglect or other good and substantial reasons, caused the membership of such persons to have lapsed; provided that such persons, so affected, shall not have worked in other places or industries to the extent that the payment of dues and assessments was required to sustain the membership of such persons.' Adopted in the convention.

550 "By Mr. Rowntree:

"Q. And the fifth and last thing that we contend with respect to tying the Welfare Fund operations to the Union was the control of the Union over the Trustees.

"Now, in this respect, you yourself have been a Trustee on the Fund from the 1947 contract on up to the present time. Is that correct? "A. I have been a Trustee during whatever period of record it is. Nominated by the United Mine Workers of America.

"Q. Yes, sir. "A. Under the terms of the contract with the Government and continued since that time.

"Q. Continued under the contract's with the operators?

"A. Continued under the current contracts with the operators.

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"Q. We have already talked about Mr. Van Horn's period as a Trustee.

"Mr. Murray resigned, did he not, in that 1948 period of dispute there; do you recall? "A. He resigned eventually. I would not know the date.

"Q. And Senator Bridges was appointed as the third Trustee. "A. On the recommendation of the Speaker
551 of the House of Representatives; Mr. Van Horn and Mr. Lewis concurring.

"Q. Mr. Lewis, is it not true that in the 1949-1950 negotiations for a new contract, the identity of the individuals who were to serve as the operators' Trustee and as the neutral Trustee were an important issue in those negotiations? "A. Do I gather that you mean the personality of
the individual?

"Q. Yes, the name of the individual and who it would be?

"A. To the best of my knowledge, the United Mine Workers of America have never taken any position except to give—to concede the full right of the operators to select their own nominee for that position. I do not think that in any way it was based upon personality.

"Q. The representatives of the operators, in that period of negotiation, did take the position that the Union was attempting to name these two trustees, did they not? "A. I do not recall such a position on their part as such.

"Q. Well, here we refer to page 96 of the 1952 Convention Minutes, the statement by Mr. George Love.

552 "A. What page?

"Q. Page 96, the next to the last paragraph. Where Mr. Love states:"

Mr. Kramer: Now your Honor, we are going to object to what Mr. Love, connected with one of the alleged conspirators, and for the reason given this morning, that conspiracy not having been proven in advance, you cannot prove it—lift it up by its own boot straps, in other words.

This evidence is not competent.

Mr. Rowntree: Mr. Lewis confirms this is a fact.

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Mr. Kramer: What he confirms, I am not objecting to that, but I am objecting to what Mr. Love may have said. I do not object to anything that they quote from Mr. Lewis in this record. Your Honor understands that.

The Court: What Mr. Love may have said is not binding on the union unless the union ratified it and approved it.

You may read it as part of the story.

(The reading of the deposition was continued.)

"Q. Page 96, the next to the last paragraph. Where Mr. Love states:"—

Mr. Rowntree: I did not mean that the union said
553 that what Mr. Love said was true, but—well, I will read it and you will recognize what I mean when I come to it.

(The reading of the deposition was continued.)

"Q. Page 96, the next to the last paragraph. Where Mr. Love states:

554 "The blank check contract Mr. Lewis is trying to force on the industry would increase the already high wage rates of the miner and give Lewis and two stooges of his own selection, theoretically representing the operators and the public, some \$150,000,000 a year to distribute haphazardly to anybody he chooses."

"I take it that Mr. Love did make such a statement as this during the course of these negotiations? Or do you recall? "A. I concede that Mr. Love may have made such a statement, if it is reported correctly; but of course this was a propaganda statement being made by Mr. Love, who is the titular head of the coal operators and the spokesman for them, and he was undoubtedly in a highly emotional state when he made that statement and, like many orators, was carried away by his own fervor, to make untrue and incorrect statements.

"As I recall, I refuted Mr. Love's statement in his presence in various conferences; and I add that the United Mine Workers of America at no time, in any year, on any occasion, under any circumstances, undertook to control

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or improperly influence any director of the Welfare Fund representing the varied interests thereon.

“We conceded then and we concede now, in all equity and good conscience and good faith, the right of the
555 various representative interests to select, without interference, their agents or their nominees.

“We further assert, then and now, that after nomination of such individuals by any one of the three interests, and his qualification and his actual seating as a Trustee, that he no longer was an agent of either of the parties which nominated him and placed him on the Board. That his sole fealty and obligation thereafter rested with the trust, the Welfare trust; and that his duty, under the law, under equitable procedure, and all moral rules, was to operate that trust for the purposes specified and in the manner prescribed by law. That he no longer was an agent of the coal operators or the United Mine Workers as the case may be, or the public at large representing the public trustee. That was our concept then; that is our concept now. And meticulous adherence has been given by this individual to the good faith administration of that policy through the years.

“Mr. Van Horn was told that on the Board by this witness. Mr. Murray was told that on the Board by this witness. Mr. Collison, the present Trustees, and their predecessors.

“We resent deeply the allusion or the inference or the statement that any improper attitude was ever taken on that question by any agent of the United Mine Workers
556 of America.”

Mr. Combs: May it please the Court,—

The Court: Members of the jury, the statement made by Mr. Lové and which has just been read to you, shall not prejudice the rights of the union in this lawsuit. It should not be chargeable to the union, and—

Mr. Rowntree: We agree, your Honor.

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The Court:—and so far the Court can see no relevancy in the statement to any of the issues involved in this suit, and that statement should be stricken unless you are expecting to connect it up.

Mr. Rowntree: Oh, yes, indeed.

Mr. Combs: May I say something, your Honor?

The Court: Yes, sir.

Mr. Combs: There is one thing I would like to make clear here that I don't think is clear. The statement that he is quoting from made by Mr. Love shows in the record here that this statement of George Love, December 28, 1949, was made at Pittsburgh. I think the record will show that.

The Court: That statement is not binding on the union, members of the jury, and it shall not prejudice the rights of the union in this lawsuit.

You can see from the context in which it was made
557 that it wasn't made by the union and the union is not bound by it in any respect.

Mr. Rowntree: That is right, your Honor. We are just putting it in to show the background of the conspiracy. Mr. Lewis has acknowledged that the operators were taking that position, and we will go on and connect it with what happened subsequently.

The Court: All right.

(The reading of the deposition was continued.)

"Q. Now, Mr. Lewis, the operators, during that period of negotiations, were seeking to establish Judge Charles I. Dawson— "A. To establish what?

"Q. Charles I. Dawson, as the Trustee named by the operators on the Welfare Fund. Is that right? "A. I recall that; yes, sir. It came out through the operators' loss of confidence in Mr. Ezra Van Horn, who was then a director of the Fund."

Mr. Rowntree: And Mr. Kramer points out that that should be "trustee" of the Fund.

"The Witness: Yes."

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Mr. Rowntree: Go to page 47, the witness at the top of page 47.

(The reading of the deposition was continued.)

558 "The Witness: They purported to find out for the first time that Mr. Van Horn was drawing a salary of \$35,000 a year from the Fund while at the same time they purported to believe that they were paying the salary to him personally in his position as secretary of the Ohio Coal Operators' Association; and it resulted in a more or less artificial lack of confidence in Mr. Van Horn; and the internal rumblings among the operators group finally resulted in his resignation.

"By Mr. Rowntree:

"Q. Mr. Van Horn did resign? "A. He did resign. However, his act of resignation was not in any way connected with the United Mine Workers or its position but, rather, to the dissatisfaction and cavilling within the coal operators' group.

"Q. Is Mr. Van Horn still living? "A. No.

"Q. But the operators did take the position that Charles I. Dawson would be appointed as a Trustee. I refer to the bottom of page 98."

1952 Proceedings. Quoting from a letter from Operators' Negotiating Committee, to President Lewis.

559 "(F) Funds shall be administered by a Board of Trustees. Charles I. Dawson, of Louisville, Kentucky, or his duly-designated successor (who shall be appointed by the Operators) shall be the Operators' representative on said Board of Trustees, with a representative of the Mine Workers, whomever they shall designate, and a neutral Trustee to be selected by said two Trustees."

Mr. Combs: Counsel, pardon me just a minute. I believe it would be much clearer for everyone if he would show at least what he is reading from.

This was a letter from the Operators' Negotiating Committee, National Bituminous Coal Conference, 1949, to

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President Lewis, January 25, 1950, addressed in Pittsburgh, Pennsylvania, January 25, 1950, and he is reading from paragraph (F). So that I think at least we ought to identify that because it would be much easier to refer to that.

I just make that suggestion and not as an objection.

The Court: That is correct.

(The reading of the deposition was continued.)

559A "Do you recall that the operators were contending that Judge Dawson should be named for them on the Welfare Fund as a Trustee?"

"The Witness: They so notified me that he had been designated by them and received a majority tonnage vote in the industry among the various members of their association.

"Q. Mr. Lewis, I show you Exhibit Number 2 here, page 4 of the exhibit filed by Judge Dawson, to his deposition in this case, and call your attention to the two telegrams contained on that page and ask you do you recall that exchange of telegrams? "A. Yes."

Mr. Rowntree: May we stipulate that or shall we read them.

Mr. Combs: We will stipulate that they were sent.

Mr. Rowntree: The telegrams were from the operators' representatives to—well, I think I had better—

The telegrams refer to the resignation of Mr. Van Horn as Trustee and the appointment of Judge Dawson as operators' representative on the Board of Trustees.

The Court: Can you stipulate to that?

560 Mr. Combs: We can refer to those telegrams. We have no objection. If he wants to go ahead, we can refer to them.

Mr. Kramer: I am not sure that is quite an accurate statement, but we can get them and read them.

Mr. Rowntree: We will bring them up later when we read Judge Dawson's deposition.

Mr. Kramer: They are exhibits.

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561 The Court: All right.

“Q. Did Judge Dawson demand payment from the Welfare Fund as Trustee? “A. Judge Dawson was never qualified as a Trustee and did not in any formal sense, demand payment as a Trustee; and it was my impression at that time that he would not demand payment as a Trustee because he had accepted the commission of the operators and was guaranteed a \$50,000 fee to take this position and put over the operators’ program on the Fund; a commitment on which the operators later defaulted and caused a serious controversy between the Judge and the operators and resulted in one or two companies having to find the entire amount of the fee to satisfy the Judge’s claim. And it developed that many operators who were committed to pay part of the \$50,000 fee, in the end declined to do so because they said they didn’t want to pay for a dead horse, and that Judge Dawson had failed to perform.

“Q. Did you have two meetings with Judge Dawson together with Senator Bridges, as Trustees of the Welfare Fund? “A. Two Trustees’ meetings were held at which Judge Dawson was present, according to the best of my recollection; and he was not present not as a Trustee but under a privilege to make his statements to the incumbent Trustees as to his right to be qualified as a director.

562 “Q. And was he claiming at those meetings that he was a duly qualified Trustee? “A. Yes. Which claim was not accepted by the Trustees.

“Q. Are there minutes of those meetings? “A. I so assume.

“Mr. Rowntree: I would like to file as Exhibit No. 2, as a late filing, copies of the minutes of those meetings.

“Mr. Kramer: Well, as attorney for the Trustees, I will make an effort to locate such minutes. I assume they exist and, if so, they will be filed or be furnished to counsel for filing.”

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Mr. Rowntree: May we have such minutes? May I inquire are there no minutes or can we put them in later?

Mr. Kramer: We have made an effort, your Honor, and the trustees to locate minutes of this and they have not been found. If they are found, they will be produced, and representatives of the trustees will be here in due course in this trial.

(The reading of the deposition was continued.)

"Q. At the same time that we are talking about here, during the course of these meetings at which Judge Dawson attended, Senator Bridges failed to approve measures which you proposed at those meetings. Is that right? "A. In my memory, Senator Bridges' position was a little cloudy, because the Senator agreed with certain things that I advocated and he agreed with Judge Dawson on certain things that he advocated, and was so badly mixed up that one wasn't ever quite sure what Senator Bridges' position was on the entire matter.

"Q. Now also, in this period of negotiations, I call attention to page 57, a statement of Southern Coal Producers Association signed by Joseph E. Moody, president, specifically page 57, the third full paragraph from the end, which reads:

" 'The Union paid no attention to our request and Mr. Lewis openly declares that the fund is not to be changed. Mr. Lewis is one of the Trustees. Without consultation with the Southern Coal Producers Association or any other bargaining agent for the bituminous industry, he recently named two other trustees who undoubtedly would be completely subservient to him, and apparently intends to insist that these Trustees be accepted by operators who agree to a new contract.' "

"Do you recall that position taken by Mr. Moody?"

Mr. Kramer: Of course, your Honor, we are continuing our objection on the line earlier made.

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564 The Court: Those statements are not binding upon the union unless the union makes such statement or unless the union ratifies them, and do not let such statements as those prejudice the rights of the union. The jury will understand those matters.

(The reading of the deposition was continued.)

“A. The statement apparently appears as being made to members of the Board of Directors of Southern Coal Producers Association by Mr. Joseph Moody, who was its president, and naturally represented a partisan point of view and, in my judgment, exceedingly biased; and, in my further judgment, exceedingly inaccurate.”

Mr. Rowntree: The last question page 52:

“Q. Mr. Lewis, can you recall in detail what happened at these two meetings at which Judge Dawson attended? “A. Only in general because the conversation was informal. It is entirely possible that much of it was of such a nature that it was not incorporated in any minutes, if minutes were kept. It was a long time ago and my memory is rather dim and I do not know how Judge Dawson’s statement appears. There is something in quotations there that comes from something that purports to be a record of what he said, as I glance on the next page; and I do not know how he could have assumed the hazard of quoting verbatim in the kind of meetings that were held. His attendance there was merely as a courtesy as a Judge. He had had a dis-

565 tinguished career and was a prominent citizen of Kentucky and of the United States and all parties were exceedingly anxious to defer to him with every courtesy and dignity; and he was given every privilege aside from the privilege of serving as a Trustee. He was not seated by the Trustees or recognized by them, and his attempts to participate in the meetings by the making of motions or demands that the Chair do this or that were considered as being gratuitous, ineffective, and not binding and not of concern to the Trustees.

“Mr. Van Horn had made a qualified resignation and the

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situation was still cloudy as to Mr. Van Horn, as to whether or not he was legally out as a Trustee. The Trustees had not accepted his resignation and the whole matter was pending.

"Q. Judge Dawson testified, Mr. Lewis, that he represented fifty-one per cent of the bituminous tonnage under the contract. Do you know if there was any other requirement as a predicate for this recognition as Trustee? "A. The mere certification of his nomination by the coal operators, as being the individual of their selection, having received a vote representing a majority of the tonnage mined annually by the signatories to the agreement, was not in itself a compulsive document.

566 "The manner of conducting the election—the manner of the separate coal companies making responses to the so-called ballot on the selection of a Trustee—was itself open to criticism; because, to my personal knowledge, many of them would write in the annual rated capacity of their operating mines, whereas, the production of coal in most instances, with most companies, was far below the rated capacity as carried in the reference books of the industry of their operating units. All questions.

"There was no compulsion upon the Trustees in a legal sense or otherwise, to accept the nominee if it appeared that he was not duly qualified.

"So the Trustees withheld action on the seating of Judge Dawson.

"Q. Senator Bridges was in favor of seating Judge Dawson as a trustee, was he not? "A. I think that part of the time he was and at other times, when his own counsel advised with him or the people with him he conferred, whether they were politicians or attorneys, he varied in his positions. He was in public life and the question had political overtones and, like some politicians whom we all know, his position at times was fluid.

"Q. We have been talking, Mr. Lewis, about the Wel-

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fare Fund for quite a while here and I would like to turn attention to this Union Security Clause of the contract and I believe that the 1947 contract has this clause in it, and we refer to page 69 of the 1948 Convention Minutes and the contract of 1947, in the first paragraph reading in part—the second paragraph, I'm sorry:

“‘It is further agreed that, as a condition of employment, all employees shall be or become members of the United Mine Workers of America.’”

Mr. Kramer: Now, your Honor, we want to renew our objection. You are again getting into the clause of the violation of your Walsh-Healy Act, and we think—and other federal acts—and we think the decision—I take it your Honor hasn't had an opportunity to read it—it came out from the Supreme Court a day or two ago—

Mr. Rowntree: We do not take the position here that the contract clause was illegal. What we are doing here is showing the jockeying around of the parties with respect to language in the contract and how it bore upon the agreement made in 1950. That is all.

Mr. Kramer: We say, your Honor, the use of that contract could not be an element of a conspiracy for the reasons we gave the other day and for the reasons that I think your Honor will find in the decision that came out of the Supreme Court of the United States on Monday of this week.

568 We do not think—

The Court: I have lost the connection, Mr. Kramer. What is the point you are making about that?

Mr. Kramer: Well, as we understood—now counsel seems to say something different here—as we understood, they were taking the position that the inclusion of this clause in the collective bargaining agreement or in the welfare provision of the agreement made the contract violative of the law, that we were using or being used by the trustees of the UMW, and as such it was an element of conspiracy.

Mr. Rowntree: Since your Honor's ruling yesterday—

Mr. Kramer: Your Honor ruled that out yesterday.

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Mr. Rowntree: We cannot put it in for that purpose. We are just showing the activities of each side, their attitude, their jockeying around with respect to terms and conditions and how they changed after 1950. Assuming that it is all legal. We show their course of conduct and it bears upon what they did in 1950.

The Court: What is it you want to put in right
569 now?

Mr. Rowntree: We are going into a short space here of what the parties did with respect to this union shop clause, the positions they were taking before 1950 and the positions they took after 1950.

The Court: That testimony may go into the record for the limited purposes indicated by counsel. The jury will not consider the clause as being an illegal clause. It is not offered for that purpose. It is just offered, as I understand counsel, as a part of the picture of the whole picture there.

Mr. Rowntree: That is right. The contrast in the attitude of parties before 1950 and after.

The Court: Well, it may go in the record for those limited purposes only.

570 Mr. Rowntree: May it please the Court, ladies and gentlemen of the jury, we refer to page 69 of the 1948 convention minutes and the contract for 1947 in the first paragraph reading in part—the second paragraph, I'm sorry—quoting:

"It is further agreed that as a condition of employment all employees shall be, or become, members of the United Mine Workers of America."

That is a straight union shop clause, that is it means what it says.

(The reading of the deposition was continued.)

"Q. Now, Mr. Lewis, do you recall that Mr. Harry Moses, representing the captive mines in the 1948 contract negotiations, took the position that that clause should be rescinded

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or amended? I refer now to pages 146 and 147 of the 1948 minutes, setting forth the statement by Harry Moses, representative of the captive group. And I refer to the third paragraph from the bottom of page 146 where he states:

Mr. Kramer: Of course, Your Honor, we continue our objection for the reasons given. This is the same Moses referred to this morning.

571 The Court: Yes, sir.

(The reading of the deposition was continued.)

"These captive coal mine operators repeat their willingness to accept the new labor contract recently negotiated between the commercial bituminous operators and the United Mine Workers of America provided the union shop provision contained therein is qualified so as to provide that it does not become effective until authorized by their employees in the manner specified in the Taft-Hartley Act."

"Do you recall the background of that statement? The requirements of the law with respect to a vote? "A. Only in general. Not in detail.

"Q. But this was the position of Mr. Harry Moses at that particular time on that part of the contract? "A. I agree if it is so recorded.

"Q. He further stated at the top of the next page:

"These captive coal mine operators are hopeful that immediate action will be taken by the General Counsel of the National Labor Relations Board to have this issue judicially determined at as early a date as possible."

"Do you recall whether or not they started such a case in the National Labor Relations Board?"

572 Mr. Combs: For the purposes of clarification, I would like to state what he is reading and quoting from.

The Court: All right.

Mr. Combs: Statement of Harry Moses, representative of the captive group, dateline, Washington, July 2nd. It was made by Harry Moses probably at a press conference.

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It isn't clear. Counsel is reading from two paragraphs from a letter containing at least seven or eight paragraphs, and the captive mines only, this only had to do with the captive mines in 1947, '48, and captive mines are not charged in this conspiracy here.

Now the relevancy of this, I just don't know, because this clearly will go on ahead, it is clearly—it was in the contract, we are not disputing that. They had a Labor Board case. Now what light this would throw to Your Honor, I don't know. I have no objection if you want to read it, but I say it is irrelevant to this case.

Mr. Rowntree: We are showing the position of the
573 parties before the conspiracy and what the contrast was after the forming of the conspiracy.

Mr. Kramer: But Your Honor, when the captive mines are not claimed to be conspirators, suppose they changed positions, they are not alleged conspirators.

Mr. Rowntree: The thing is, Mr. Harry Moses became the principal spokesman for the conspiratorial group, we say.

Mr. Kramer: At what time?

Mr. Rowntree: After 1950. This was his position before that time.

Mr. Combs: I don't think any dispute developed over that clause is my point, so how could it be his position, Your Honor? The union allegedly accepted that.

Mr. Rowntree: We show why they accepted this. What we are showing, Your Honor, is the position of the parties before and after the conspiracy.

The Court: And that is the only purpose for which you are reading these statements?

Mr. Rowntree: That's correct.

Mr. Kramer: They are not parties.

Mr. Rowntree: This is a statement of the principal spokesman of the large operator group after 1950.

The Court: All right.

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574 "A. The question of the captive mines and the relationship of the companies to the union and the membership of the employees was a matter that was more or less a controversy over a period of several years beginning with the resistance of those companies, those captive companies, to the right of their employees to join the union.

"Various shut-downs occurred from time to time, stoppages of work; and the companies resorted to the usage of the coal mine police of Pennsylvania, which were then extant, and repetitious conferences were held with officials of the United States Steel Corporation and other steel companies, and the whole thing assumed an air of continued controversy with new attacks from different quarters from time to time on the integrity of the agreement and on the right of the employees to belong to the union or on the necessity of the employees belonging to the union.

575 "There was governmental intervention several times into these controversies.

"Passage of the Taft-Hartley Act put a new phase on it, and I think in the end it was clarified with due regard to all the statutes made and provided.

Mr. Kramer: Now, Your Honor, the record does show our objection. I don't want to interrupt again. We have made our argument.

The Court: Yes.

Mr. Kramer: All right, Your Honor.

The Court: Members of the jury, these statements appear to refer to what counsel has described as the union shop clause which was discussed apparently in these meetings to which the minutes refer. Now a union shop clause in the contract would not make the union liable in the lawsuit of this kind. Before there could be liability in this suit, the jury would have to find from a preponderance of the evidence that the union made an agreement with one or more of these coal operators to either restrain interstate commerce insofar as it related to these small operators, or to

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monopolize the bituminous coal industry in interstate commerce for the purpose of driving these small operators out of the industry before there could be any liability in this case.

The Court is allowing this documentary evidence to go into the record for what bearing it may have on the dealings between the union and the coal operators, or for what bearing it may have, if any, on the alleged conspiracy that is charged in the cross action. So, keep in mind that this clause to which counsel is referring from time to time, this union clause, is not a predicate for liability upon the part of the union and shall not prejudice the union in any respect and the jury may only consider it for what bearing it may have on the alleged conspiracy that is involved in the litigation.

Now for those limited purposes, this evidence is being received.

Mr. Combs: As a matter of fact, to save the Court's time a little, I think just a few pages here, it shows that counsel stipulated this particular union shop clause and said that the court's decision in that would be the question that would decide that. As a matter of fact, what we are talking about here, Your Honor, is the 1948 contract. It had a union shop clause in it at that time. Captive mine owners said it was illegal and on stipulation approved by the court, this matter was litigated to the Supreme Court and came back down on whether or not the 1948 clause in the contract was legal or not, because of the passage of the Taft-Hartley Act. The Supreme Court sustained the Labor Board that it was as contained in the '48 contract. It was not continued thereafter, and I think can be of no possible relevancy in this case. This is not the union security clause we are talking about in the 1950 contract; this is something contained in the '48 contract which went to the Supreme Court of the United States and was decided by that Court. I don't know of any higher tribunal.

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The Court: And what did the Supreme Court—

Mr. Combs: The Supreme Court held that the union shop clause in the '47 contract was strictly legal, but the Taft-Hartley Act became effective after that. The operators said that that clause incorporated in the '48 agreement, the captive operators said that clause was illegal because of the passage of the Taft-Hartley Act.

There was a legal question that I won't try to go into here of the effective date of the Taft-Hartley Act, whether it was a current contract or one in the future, and before the United States District judge in the District of Columbia, that was to be litigated, and was left out until it was
578 litigated, and the Court said it was illegal under the '48 contract as it existed because of the passage of the Taft-Hartley Act.

It was dropped, it was complied with. The Labor Board's order was complied with. The union has a letter of compliance that they did comply with all of the orders of the Board with reference to that. It was closed, and my point was that here we have the situation now, in this case of bringing the negotiations having to do with something that the Supreme Court settled by the agreement of the parties, litigated to the Supreme Court. There is no question about the union's compliance to that that I know of, and the only thing I am saying in regard to this, I have no objection to counsel, if he wants to pursue that, and under the rulings of the Court, but the thing I am pointing out, when we start to put on our case, I don't think it should be necessary to have counsel and all of these Board cases and all of these things to show exactly what happened. I don't think they are relevant in this case, but if counsel is going to make it an issue and going to the jury for some purpose—

579 Mr. Rowntree: Actually, counsel has gone beyond our purpose. We are not intending to show the result of that case. We are not intending to show at this time whether that contract clause was legal or illegal. We are

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showing a position taken by a party. The principal spokesman for them.

We are showing the position he took with respect to a union shop clause in the contract before the conspiracy, and his later attitude with respect to a union shop clause will be shown subsequently after the conspiracy was joined. And it is only for the proof that some agreement was made.

The Court: Mr. Combs, wasn't the wording in the so-called union shop clause in 1947, or prior to the Taft-Hartley Act, different from the wording in the present contract?

Mr. Combs: Yes, sir.

The Court: The wording on the so-called union shop clause, as I understand, in the present contract, only applies in states which allow union shops. But in Tennessee the clause would not apply because Tennessee has what is called an open shop law. Isn't that the situation?

Mr. Combs: Your Honor is exactly right. And the thing I am trying to point out to counsel, regardless of
580 whether he wants to bring that out, we would have to present our side of the situation, both sides.

What I am trying to point out is this, that the clause that he is talking about now, was declared, because of the passage of the Taft-Hartley Act, by the National Labor Relations Board and by the Supreme Court of the United States to be in violation of that Act under those circumstances at that time.

Now the union and the operators negotiated the 1950 contract under the guidance of the Supreme Court decision and under the injunction from the District Court, who say that you can't put that clause back in that contract.

The Court: Could we save time by stipulating on that?

Mr. Combs: We tried to stipulate at the deposition but we would let the court's decisions speak for themselves. I don't know whether counsel thinks that would help or not.

The Court: Can we?

Mr. Rowntree: Yes, sir, I will agree with what counsel has said.

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The Court: You stipulate what Mr. Combs said
581 about this so-called union shop clause is correct?

Mr. Rowntree: Yes, sir.

The Court: Now doesn't that finish it?

Mr. Combs: I think so.

The Court: You will note that the Court sometimes confuses these open shops and closed shops. That is because, Mr. Combs, that the Court is not used to these terms like you are, and if the Court does confuse them it does not intend to.

Mr. Combs: I realize that, and it is complex, and we are talking specifically now of the clause as contained in the 1948 contract, and that is what we are stipulating about—that it was a clause that was declared by the labor boards that it would be illegal to insert after the effective date of the Taft-Hartley Act and that was not re-inserted in the 1950 contract and has got nothing to do with it.

Mr. Rowntree: All right.

The Court: All right.

Mr. Rowntree: It was just to show the jury.

The Court: All right. That is the stipulation.

Mr. Rowntree: And skip to the top of page 62.

582 "The operators or the Southern Coal Producers' representatives were likewise taking a legal position on that question there; do you recall that? "A. The Southern Coal Producers Association was a minority group in the production volume of the industry. The leadership substantially was asserted by the operators of the bituminous coal operators association representing the bulk of the Appalachian Range and a good deal of tonnage in outlying districts in the far western areas. So it was the habit of the Southern Coal Producers Association, after the fact of developments in the industry—or to authorize Mr. Moody to aver, saying in substance, "Me too. Me too." So, as a matter of fact, I never paid much attention to Mr. Moody's utterances because he had been an officer in the National Association of Manufacturers before he was em-

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ployed for that position and, later of a machinery company in York, Pennsylvania, and I considered him to be more or less an anti-union propagandist; and he seized upon every possible occasion to sound his horn.

"I knew Mr. Moody quite well. As an individual I like him very much. I think he has many fine, able qualities. I think that the years have ripened his judgment and added to his wealth of experience and his ability to understand the condition of the industry is much greater. That was one of his great handicaps in the early days: His
583 lack of knowledge of the industry and its problems and the personnel of the industry, and I think that he has ripened and grown with the years and now occupies a very influential and important position in the industry.

"Q. What is his current position? "A. He is president of the National Coal Policy Conference. .

"Q. Has his attitude toward the union changed since these days that we are talking about? "A. I could not say as to that with any degree of reliance upon my opinion, except that he is working in a position now where that problem is not a question.

"Q. This 1950 negotiation involved the President's appointment of a three-man Fact Finding Board again. Do you recall that? "A. 1950?

"Q. 1950. "A. I am sure there was a Fact Finding Commission but, again, the sequence of dates I am not sure of.
* . . . *

584 "Q. We have been talking here, Mr. Lewis, about the Welfare Fund provisions of the contract and the union shop provision of the contract and the positions of the parties on that, particularly the positions of the operators.

"There were certain other basic issues, were there not, in those 1950 negotiations? Specifically, a wage increase was in issue? "A. Every conceivable item that ran to the well-being of the members of the United Mine Workers employed in the coal mines was always an issue in every

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joint conference, susceptible of consideration and analysis; and certainly the agreement, in its final form, must run beyond academic questions or legal questions.

"The prime consideration was bread and butter. Reasonable hours, so that a man would not have to labor to the point of exhaustion and become physically impaired before his time. The living standards which were
585 affected highly by the bread and butter consideration and compensation. The health of the miners. The occupational diseases. The question of why life expectancy was shorter in the coal mining communities of this country. The specialized illnesses of the coal mines.

"For instance, the pneumonia rate in the coal mines of this country averaged, for many years, ten per cent above the national normal standard.

"Why? Because he worked in the coal mines. Because he was subject to temperature changes and inadequate oxygen in the air. Mine gases and all those things that contributed, so the medical profession says, to the higher incidence of deaths by pneumonia.

"Just the same as in the Kentucky-Tennessee-Southern West Virginia area, deaths from childbirth were two and three times the national average.

"Why? Because of inadequate medical facilities.

"All those things are pertinent matters which may have been discussed and no agreement reached; and the final contract, finished contract, drawn up and executed—and confirmed by both sides and accepted in the compromise of those positions—represented the best that could be achieved at that time under the circumstances and conditions prevailing.

586 "Q. Mr. Lewis, one of the principal issues in the 1950 negotiations was the question of stabilizing the industry. "A. The what?

"Q. Stabilizing the industry. "A. I thought you said 'vaporizing'; pardon me.

"Q. A problem arising from the fact that there was too

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much coal for the market. Do you recall that? "A. Oh, yes. That is a term frequently used—somewhat loosely but as a generic word.

"Q. We refer here to pages 296 and 297 of the 1948 convention. A statement by President Lewis at the 1948 convention. * * *

"I would like for you to read particularly the first paragraph under your name there, the name of President Lewis. The first paragraph and also the paragraph starting at the bottom of page 296. These two paragraphs. And also the second full paragraph on page 297."

Mr. Rowntree: That states as follows:

"President Lewis: May the Chair say this in relation to the general subject matter: The productive capacity of our coal industry exceeds at any normal time the consuming capacity of our markets. For many long years the coal industry was developed to a degree that the work-time of industry was intermittent, and in the majority of coal-producing states was almost chronically under 200 days per year work-time opportunities. A comparatively small number of special-purpose company mines, producing special-purpose coal, were able to work almost full time. Yet there were times when extraordinary conditions—world demand, wars and rumors of wars—made more demand for the product, and when we oftentimes found that an inadequate car supply prevailed and men in specialized areas on special rates were deprived of a reasonable opportunity for work participation."

Down to the bottom paragraph.

"The Mine Workers had a bitter experience in that matter and we have taken some profit from it. In the Anthracite industry we made it an issue, and due solely to pressure from our organization and the policies which we suggested we were finally able in the Anthracite region, covering Districts 1, 7 and 9, to put into effect a joint commission consisting of representatives of the Operators,

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representatives of the three Districts of the United Mine Workers, and representatives of the State of Pennsylvania, to allocate the work time for the Anthracite industry, so that such work time as was available would be shared
 588 by all of our members in as substantially equitable a manner as could be made effective. This arrangement has proven to be a great stabilizing influence in the Anthracite industry. Its maximum of efficiency has not yet been demonstrated because of the existence of a World War, and the fact that the industry has been taxed to supply more and more coal."

The second full paragraph on page 297.

"I merely want to say this in connection with this matter. When this market condition comes to a point in the Bituminous industry that it threatens the stability of our contract and the working conditions of our people, when the disparity of employment get to a point where it constitutes a rank injustice and lack of opportunity for our members to work, the United Mine Workers of America itself may find it necessary to advise our members how many days a week they need to work. We have that contractual right, because the contracts are written to permit that. It is a matter of self-preservation for our Mine Workers; it is a matter of self-preservation for the investors in the industry. If the Operators of this country can't give any leadership on the commercial side of this industry, the United Mine Workers of America can and will.

* * * * *

589 "So next year, in 1949 or at any other time, when evil days come upon this industry, you will find the United Mine Workers of America moving in, and if there are only three days' work in this industry we will all have the three days' work. These things are of the utmost importance. Conditions are not now as they were in the old days. Year's ago our Contracts were staggered and they expired at different times. Large segments of the industry

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were not organized and the men had to work under inhuman conditions."

This is a statement made at the 1948 convention.

Mr. Combs: I would like to point out, your Honor, that Mr. Lewis was addressing himself to a resolution offered by Local Union No. 6938 at Cannelton, West Virginia, and that this resolution, subject matter was a guarantee for regular employment. It particularly asked for the government to make an investigation of the coal car shortage in the industry. That was what Mr. Lewis was addressing his remarks to, and I think it would clarify it, if it
590 were known.

The Court: Yes, sir.

(The reading of the deposition was continued.)

"Do you recall this statement? "A. Oh, yes, and I may say that those observations merely relate to one thing: The equitable distribution of work opportunity in the coal industry and the desire of the United Mine Workers to have the work opportunity more equitably distributed. It had nothing to do with any other subject.

"Q. And in 1949 and 1950, during the period that the negotiations for the 1950 contract were going on, you did set three-day work-weeks and other types of work-weeks in the industry? "A. We set a three-day work-week, yes, to distribute the work and the opportunity for work; and for no other reason."

Mr. Rowntree: There are references here to communications from mine workers with respect to the setting of three-day work weeks.

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591 Mr. Rowntree: Page 66. This is a statement by Mr. Lewis June 23, 1949 to the joint conference that was in session at that time of the new contract after the termination of the 1948 contract.

"There comes up at this conference, we think, the question of some regulation of the working time, some stabilization in the industry."

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Mr. Rowntree: "The Mine Workers have gazed at some degree with admitted apprehension at the tendency of the industry to reduce their prices in the face of increasing competition. Frankly, we think the industry has been too hasty."

Dropping to the last full paragraph:

"There has been much talk lately about a stabilization plan, much of it is affecting the Mine Workers and the

Operators. It has no basis of fact and cannot be considered practicable. It is true, however, that we do

have a segment of the coal industry operating under a plan that brings about a distribution of working opportunity (Mr. Lewis then explained the plan that had been worked out in the Anthracite Industry). We would like to talk to you in this conference on some improvements and stabilization which is a question of magnitude in the minds of the men as affecting the investment in the industry. We would rather deal with you when you are opulent rather than when you are poor. We like to negotiate with you when you are full, when you are satisfied, when you can pay your board at first-class establishments, and we can, too."

The next paragraph beginning at the top of page 67:

"There are a number of things in the Agreement affecting working conditions and joint relationship which we think ought to be improved. We think there ought to be set forth in the Contract, in principle, a definite rule for the industry to follow on seniority and the reduction of manpower; because that is going to be a question that is germane for attention in the industry as we go forward. The manpower of the industry is going to decline for the reason we all understand. The productivity of the industry is going to

increase. It is increasing and I see no reason to believe that it will stop increasing for an indefinite period. The labor cost per ton is declining and will continue to decline."

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Mr. Combs: I would like to point out for clarification that the quotes that counsel read from are parts of two paragraphs and some other paragraphs from a statement made by Mr. Lewis in June 23, 1949, and that that statement in the minutes consisted of three pages. And we will refer later on to other parts of the statement. I just wanted to clarify that.

* * * * *

"Q. Mr. Lewis, do you recall this statement apparently made June 23, 1949, in the joint conference? "A. Yes.

"Q. Did not the operators' representatives protest your effort to set the working time in the industry? "A. Yes. As I recall, they did."

Mr. Rowntree: We here refer to specific objections and statements at page 81 of the 1952 convention, also
594 page 84 of the 1952 convention and the statement of the Southern Coal Producers Association, page 48, 1952. We won't read those.

"They were not interested, Mr. Lewis, in letting the industry work a three-day work week. These operators' representatives were not interested in a three-day work week in the industry? "A. No. As I recall, they protested.

"Q. We have been talking about issues in these 1950 negotiations and there were many days of short work weeks and many periods of time of no work during these negotiations, is that right? "A. It varied with different companies, and the mine workers were interested in equality of opportunity for employment. That was the sole consideration.

"We do not and have not sought any privilege in management or in the coal industry beyond the production problems. The United Mine Workers of America do not follow through the coal to the market. They are interested in volume and not in prices. We have always recognized the right of the operators to make the prices in accordance with their judgment but have sometimes doubted the soundness of their judgment, and we thought at times it was done to be able to pull a poor mouth in the wage negotiations and

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secure a contract for lesser wages than might have
595 been the case, by pleading poverty.

"In addition to that, there are some coal companies owned by outside interests who are perfectly willing to put their coal companies in the red for the tax advantage in equalizing on other holdings they might have in industry. That is certainly true to a marked degree in certain instances.

"But the mine workers were interested only in equality of work opportunity. We wanted to get away from the feast-and-famine thing to a certain degree. Excessive production in times of stress or market improvement—demand, and no work at all under some circumstances.

"Q. Finally, the supply of coal in the country in 1950 ran exceedingly short before the 1950 contract was finally signed; did it not?

"A. I don't agree with your words. I agree that the storage was used up to some degree but not in any sense that it created apprehension and danger."

* * * * *

598 "Q. Well, would you say, Mr. Lewis, that the country was experiencing difficulties and dangers because of shortage of coal in that period? "A. No. I would say that the threat of possible shortage of coal might have caused some apprehension among nervous citizens, and the whole theory of stoppage of production in an industry is an unpleasant concept for the average citizen to face. He would like for a normal condition to prevail.

"Q. Particularly a basic industry like coal. "A. Quite so. But we have so many industries now that are on an equal basis. We couldn't do without any of them.

600 "Q. Coal remains the fundamental, basic industry? "A. Yes, but food comes before that and shelter and transportation, before the coal can be gotten to these places.

"Q. It goes around in a circle, in other words? "A. It

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is all interdependent. It is a marvelous, complicated economy we have erected here.

"Q. Mr. Lewis, that brings us to the signing of the 1950 contract."

"It is our contention that this is the point where the conspiracy was formed that we allege in this case."

"You had been negotiating with Mr. Love, Mr. Moses, these various representatives of the operators over a period of many months and you knew them very well, I take it. You knew their companies and their respective positions in the industry, of these various companies represented by Mr. Love and Mr. Moses. "A. At that point let me intervene, if you please.

"Q. Yes, sir. "A. They were representatives of the industry. It was not only their units of production that were concerned. And while I knew a good deal, I think, concerning their problems as minor producers of coal, I knew equally as much about all the principal units in the 601 country. That was my business. It didn't make any difference where a man came from; if he operated a sizeable mine we had certain information on it, factual information that would run to questions of our interests. We knew what his bank was. We knew what his capitalization was. We knew what his dividends were, if he had any. We knew the banks that he was in debt to; the banks that could influence him. The companies that he sold to. The problems of mining. The different irregularities and the natural conditions that made for a higher or lower cost of production. The quality of the coal. The efficiency of his preparation of it for the market. We know that about all the companies.

"So in that respect I knew no more about Mr. George Love's plant than I did about anybody else's plant."

602 "Q. Mr. Lewis, we refer to the 1952 convention minutes, pages 72 through 81. A statement by you at

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White Sulphur Springs, October 16, 1949, wherein you describe the relationships of certain individuals to certain companies.

603 "These statements were made as statements of fact by you, I take it, with full belief that they were true statements?" "A. I failed to catch the last three words.

"Q. I mean this statement made by you on these pages, you believed to be true at that time, and you still believe them to be true?" "A. That is characteristic of all my utterances.

"Q. Yes, sir. This is your conclusion as to the place that these various companies, referred to here, filled in the bituminous coal industry?" "A. If you will pause just a moment—

"Q. Yes, sir. "A. —I am trying to identify to whom this statement was made.

"Q. All right, sir. "A. Do you have it? What date did you say?

"Q. October 13, 1949. "A. Yes, but to whom was it made? Was it an address to the conference? Was it a public interview?

"Q. I would say it is a public interview, from the contents."

* * *

604 "A. I would assume from a cursory examination of this, that in an address to a joint conference, of the Appalachian Joint Conference, and that present were all the negotiating operators and all the representatives of the United Mine Workers, a considerable number. And I reasonably conclude that it is an accurate transcript of what I said.

"Q. Yes, sir. "A. Without knowing.

Mr. Rowntree: At this point, we read the statement made on October 13, 1949, page 72 and parts of the next four pages starting at the second sentence in the last paragraph on page 72.

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"The so-called captive mine companies owned by steel companies have an annual production of about 52,000,000 tons—the coal mined by the wholly owned subsidiary corporations of operating steel companies. In addition to mining that coal, the same steel companies buy an enormous tonnage of coal from commercial producers, which forms an important item in total business volume for an operating year. The captive mine production together with the production of the Pittsburgh Consolidation Coal Company, which is the largest so-called commercial coal producer with several other companies closely allied to them in financial structure, sales and operating arrangements, amounts to about one hundred million tons.

605 "There is another group similarly, though more remotely controlled, in the South, which heads up with the tonnage of the Island Creek Coal Company, the Pocahontas Fuel Company and certain others, which operates through the Southern Coal Producers' Association.

"The Southern Coal Producers' Association is a holding association composed of about fourteen regional associations. And in negotiating with the Southern Coal Producers' Association, we are one move further from the operating coal companies. They first hide behind their regional association and secondly, hide behind the Southern Coal Producers' Association.

"The Southern Coal Producers' Association, however, is a false front for the Appalachian Coal, Incorporated, which is a sales organization which levies a brokerage rate on about forty to about forty-five million tons of annual production making sales contracts for the entire volume for a mine or a company and charging a percentage commission for the handling of that tonnage.

"The interests of the Island Creek Coal Company which control the Appalachian Coal, Inc., therefore, have vast influence with any companies that sell coal through that organization and it would be commercially and to some

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606 degree financially disastrous for those companies, members of the Southern Coal Producers' Association, to take any other attitude than the attitude taken with respect to wage contracts by the Island Creek Coal which dominates Appalachian Coal, Inc.

"Therefore, another set of controls is set up which affects about an additional ninety to a hundred million tons of production. The Island Creek Coal is controlled by the Cleveland Trust, the family trust for which that company is trustee. And Mr. Isadore Freiburger, the chairman of the Cleveland Trust, member of the board of directors of Island Creek Coal, Pond Creek, representing the estate which controls the company with a completely free hand, can dictate the policies of the Island Creek Coal. He is doing it in association with and in cooperation with the major financial groups in the steel industry who are seeking to avoid the necessity of establishing a contributory pension plan and welfare arrangements in the steel industry.

"That amounts to about two hundred million tons of the nation's so-called five hundred million or more national bituminous production.

607 "In addition that, there are certain groups of companies operating in the industry, like the corporate concern owned by the Koppers Company which mines about fourteen million tons a year, completely dominated by the Mellon financial interests.

"In addition, there are a great number of captive mines, not ordinarily covered by that terminology, which are wholly-owned subsidiaries of commercial manufacturing companies and which furnish coal to those companies—automobile companies and other concerns of a miscellaneous nature. They are captive mines except they are not ordinarily included in that terminology when it is used to describe certain types of mines.

"These interests are in association with the interests that are in the steel industry and have taken this stand against

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pensions and welfare in the contract in the steel industry. These interests include all the companies interested in steel. They include the representation on their Board of Directors from various industries, such as Mr. Walter Gifford, representing the empire and all the employees of the American Telephone and Telegraph Company as he sits on the Board of the United States Steel; Mr. Sewell Avery, representing the great gypsum company and Montgomery Ward and other interests as he sits there, and the representatives of the great major insurance companies which have
608 large investments in industrial enterprises and have representation on these Boards.

"So, we have a combination of powerful financial leaders, not necessarily great in number but tremendously influential in the magnitude of their financial representation. That includes practically all the major automobile companies, with the exception of Ford. It includes practically all of the steel industry. It includes the insurance companies. It includes the DuPont family and their great investments—their holdings, of course, of twenty-three per cent of the stock of General Motors which is controlled for all practical purposes. It includes the Mellon empire and their banks. And taken together makes a tremendous group of immense power who apparently have decided to make this struggle in steel, final and significant in American economic history."

Dropping to the third from the bottom, fourth paragraph.

"The struggle is on in the steel industry. Now it is obvious that the steel industry, financially interested in many coal mines, would be disinclined while this trouble is on to permit a contract to be negotiated in the mining industry that would reaffirm the principles embodied
609 in the welfare and pension plans in contract in extenso for its operation. They, of course, recognize that eventually they will have to make that form of contract in the coal industry. But they wish to postpone the day.

So, it is just as simple as Mr. Benjamin Fairless, president of the United States Steel, saying to Mr. George Hum-

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phrey, head of M. A. Hanna, which owns thirty-eight per cent of the stock of Pittsburgh Consolidation Coal: 'Do not let George Love, as chairman of the Operators' Negotiating Committee at White Sulphur, make a contract that will embody a welfare clause!' It's just that simple. It's just that effective. And it operates just that way.

"So Mr. Love in his unique position of representing definitely and primarily these great combined interests which I have described in the coal industry, is in the position of being the actual as well as the titular leader and spokesman of the coal operators of the country due to circumstances and competitive relationships in the industry.

"For instance, no commercial coal operator as yet in the country, whether he is west of the Mississippi River or east of the Mississippi River, south of the Mason-Dixon Line—
610 if he is in the business of producing commercial coal—
would hazard his business future by undertaking to disagree with the leadership furnished the industry now by the United States Steel through Mr. George Love and Mr. Harry Moses, who is on the outside but is adviser and counselor of Mr. Love. No operator would dare hazard his commercial and business future.

"In the first place, he dare not make an agreement with any expectation of remaining in the business of producing coal unless he knows what his competitor will pay in the form of a wage structure. In the second place, if he wishes to sell his coal in the open market and sell some of it to these industries which I have described, he cannot offend them by undertaking to go contrary to their wishes on wage negotiation policies.

611 "In addition to that, he dare not commercially offend the financial influences exercised through the great banks wherein the interests described are dominant. I refer to banks like the Mellon Bank in Pittsburgh, a billion dollar concern. George Love is a director in that bank and sits in the holy of holies in discussion of these policies. I refer to banks like the Continental Illinois in Chicago, the great New York banks where the steel corporations, motor

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industry and all of these allied industries have literally billions of dollars of deposits which can be shifted about at will to the detriment of the banker or to the detriment of the banker's customer who doesn't act in an orthodox manner from their standpoint.

"Therefore, there has been no progress in the coal negotiations. And, therefore, it is a reasonable expectation that there will be no progress until the roadblock which they have set up has been removed by the same forces which set it up.

"They have elected to fight this out and create this crisis and there is nothing that labor can do either in the coal industry or the steel industry than to await their pleasure."

The first full paragraph on page 76:

"Mr. Love is a hired man for the M. A. Hanna
612 interests. He runs the Pittsburgh Coal for them."

I might say, your Honor, Pittsburgh Coal is presently Consolidation Coal Company.

"He carries out their orders. He takes instructions from George Humphrey. George Humphrey is a partner in the steel industry with Ernie Weir of National Steel. He sits in the steel conferences. He prides himself on being primarily a steel man and not a coal man."

In the middle of page 77:

"It is impossible that the Southern Operators conceive that they will be successful in having the Mine Workers go to work in the mines again without a Welfare Fund. But they use it for the same reason—to create an impasse and a deadlock until their financial sponsors and their industrial customers advise them that it is no longer necessary to protect the steel industry by tying up the coal industry."

Mr. Combs: Just for the record, may it please the Court, while he is looking for that—the excerpts he read was a statement made by President Lewis at White Sulphur Springs, West Virginia, October of 1949.

His statement was extemporaneous. It contained
613 some nine and a half pages. That excerpt was from nine and a half pages.

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Mr. Rowntree: We are at the bottom of page 81. We quote some of that language.

(The reading of the deposition was continued.)

"So it is just as simple as Mr. Benjamin Fairless, President of the United States Steel, saying to Mr. George Humphrey, head of M. A. Hanna, which owns 38 per cent of the stock of Pittsburgh Consolidation Coal "do not let George Love, as Chairman of the Operators' negotiating committee at White Sulphur, make a contract that will embody a welfare clause." It is just that simple. It is just that effective and it operates just that way."

"Mr. Lewis, if these men could tie up the industry against the union, it would be just as easy for them to tie it up with the union?"

614 "A. I would say that it is purely an assumption. The question is predicated upon an assumption which has no bearing and it is not germane to the subject matter. I see no reason to quibble about words.

"Q. Now one of the things that occurred after the 1950 contract is reflected in the United Mine Workers Journal, September 1, 1950, page number 5. I show you a copy of it."

"Q. Do you recall this development that is recited here in this Journal page?"

615 Mr. Rowntree: Top of page 83.

"A. Unquestionably at the time it occurred I must have had some knowledge of it but did not consider it too important, knowing a good deal about Mr. Denham's background and previous condition of servitude.

"I am frank to say that I had forgotten all about it. I had forgotten that this statement ever appeared in the Journal and had truly forgotten Mr. Denham.

"Q. But it does appear that the operators and the union were seeking a dismissal of a labor board case previously

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brought by the operators? "A. It is possible, yes. I wouldn't know."

Mr. Rowntree: The Journal exhibited there states:

"The fantastic absurdity and mischief-making potentials of the NAM-Taft-Hartley Act were never more glaringly placed on view than in current proceedings before the National Labor Relations Board wherein the UMWA is being required to defend itself against unfounded charges of a dubious, technical nature at best and which the coal operators, who originally filed the charges in the heat of last winter's wage dispute, have since asked be withdrawn."

(The reading of the deposition was continued.)

"Q. Now with respect to the disposition of the 616 various issues that"—

Mr. Combs: Just before you pass on, if you don't mind, that is a quotation of one paragraph from the full page, two-column article on the United Mine Workers Journal in the issue counsel referred to, and it is styled by the editor "Shylock Denham Presses T-H Prosecution of UMWA in Spite of Operators-Union Plea." That is a two-page statement.

Mr. Rowntree: We are beginning to contrast the relationships after 1950 as compared before 1950.

617 "Q. Did the operators' representative, particularly Messrs. Moses and Fox, ever again raise any question in negotiations, with respect to this language? "A. They may have or they may not. I don't know. Because countless questions were raised during their tenure in office. That is their duty. It is a large industry that involves thousands of men and thousands of operators, and it is routine, and ordinarily these things don't come to the attention of the Chief Executive of the organization because he does have some other duties, and he delegates the administration of these things to other men.

618 "Q. Mr. Lewis, did you become personally advised of the passage of the 1951 amendment to the Taft-

Hartley Act which prohibited the union shop clauses and collective bargaining agreements where the union has not complied with the reporting provisions within the preceding twelve months?"

Mr. Combs: I made an objection to that, Your Honor, that it is strictly a legal question as to what the statute did and what it provided for, and I don't think the witness should answer a question like that.

The Court: That's correct, it is a legal matter, but did he answer the question, Mr. Rowntree?

Mr. Rowntree: Yes, sir, on page 91, the middle of the page..

(The reading of the deposition was continued.)

"A. I do not recall my reaction on the first news that it had been adopted by the Congress; but unquestionably, with regard to the usual procedure, I would wait until my lawyers had time to come in and tell me what it meant, and then I would advise them to look after our interests in connection with it.

Mr. Combs: That is just an illustration, Your Honor.

I don't see how on earth this serves any purpose
619 whatsoever reading things like that.

Mr. Rowntree: If Your Honor please, we will proceed to show that they have not complied with the provisions of the reporting law, and that the companies raised no objection to the clause in spite of that. That would be the purport of the following pages, expressions of the union with respect to the filing compliance. I believe it will show clearly the attitude of the union with respect to that, and the provision of the law at that time required the filing of these reports to make an effective union shop clause.

The clause remained in the contract even after that law was inserted in 1951, and the clause went unchallenged by the major coal operators in contrast to the previous—the history of challenging these things. That is the purport of what we put in this morning.

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Mr. Combs: Now, may it please the Court, I don't know what he is talking about, the requirements of the reporting requirements that the operators would have something to say about why doesn't the union do it.

Now it is stipulated here, there's been no claim whatsoever that the union elected to avail itself of the facilities of the Labor Board. The clause that we have here, the security clause, at that time admittedly was not an effective
620 union shop clause. There's no claim by the union that it was, the Courts have so held.

Now what counsel means by that, I don't know. I don't know why the operators didn't reply to that. The union's never made any claim and neither have the operators. Both parties had negotiated this clause with the view in mind of negotiating a perfectly valid, legal provision of the contract. The Courts so held.

The Court: Can't you stipulate what Mr. Combs just said as fact?

Mr. Rowntree: Yes, with the further stipulation that the clause remained in the contract in its amended form even after 1951, and that the operator representatives made no contest over it.

Mr. Combs: I see no reason for stipulating that. That is true, it is in the contract now, as of now. There has been —there may have been complaints on the operators' part, I don't know. I can't stipulate to that. I don't know if there has. I have no knowledge of it.

The Court: Does that satisfy you, Mr. Rowntree?

Mr. Rowntree: Except for this, Your Honor. A while ago counsel stated that the clause was in effect "ex-
621 cept in those states which had right-to-work laws."

Mr. Combs: I didn't say that.

622 Mr. Rowntree: Well now, that is the thing that bothers me. It has bothered me for a long time. Is the clause in there or isn't it?

Our only contention now is that there was no protest by

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the operators after 1950 over this clause, in contrast to their previous contest over it, repeated contest, hot contest.

The Court: Mr. Combs, as I understand, is willing to state insofar as he knows there were no protests on the part of the operators.

Mr. Rowntree: That is all I want.

The Court: All right. Let the record so show.

Mr. Combs: It is my assumption that when the operators signed the contract, they assumed it was a legal clause, and I know of no protest on the part of the operators on that clause.

Mr. Rowntree: That gets back to—

Mr. Combs: It is our further objection that, of course, the evidence and the stipulation we are talking about has no relevance to an anti-trust action.

626 (Thereupon, the jury retired from the courtroom and the following proceedings were had in the absence of the jury.)

Mr. Kramer: Your Honor, the plaintiffs now propose to go into some testimony with reference to non-compliance by the United Mine Workers of America of the Taft-Hartley Act, non-Communist oath, et cetera, which raises what we think is a serious question and we think the
627 evidence is incompetent. And may Mr. Rayson present our objections to you?

The Court: Yes, sir.

Mr. Rayson: Your Honor, it is a known fact, of course, that the United Mine Workers elected not to file certain things with the Department of Labor under the National Labor Relations Act as it existed in 1947. They did not file financial information with the Department of Labor. They did not file a non-Communist affidavit.

It is our position, particularly with reference to this last,

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that this is highly prejudicial to the position of the United Mine Workers and that it ought not to be introduced into evidence.

The Court: Can't you avoid getting that before the jury by stipulation on the law features? Can't you keep that out from the jury by stipulating—that is not going to be controlling in this lawsuit.

Mr. Rayson: We think this, your Honor, it has absolutely no bearing on this case. It doesn't need to be in this record. It ought not to be in this record.

The Court: What is the point, Mr. Rowntree?

Mr. Rowntree: If your Honor please, we are showing the bearing that it has on conspiracy and restraint
628 of trade, proving the nature of the understanding and agreement that was made in 1950.

Now we have shown already the position of the operators before 1950, their haste in going into court with everything they could put their hands on. Now we come to a situation where there was an obvious remedy in an appropriate proceeding that they could take, which they would have taken under their attitude before 1950, and that is this. It is agreed that there could be no union shop in a labor contract with the union which was not in compliance with these reporting provisions.

As counsel has stated, it was a well known fact that this union had not complied, and yet we have a union shop provision in this contract.

Mr. Rayson: May it please the Court, in the first place, the non-compliance of the United Mine Workers dated from 1947, and, of course, as everybody knows, the reason that Mr. Lewis refused to sign the non-Communist affidavit was not because he was a Communist, but because he resented the fact that he and other people were being singled out to sign such affidavit in order to take advantage of the law.

The United Mine Workers' position on Communism has been a matter of public record since 1924. They op-

629 posed it long before it became popular to oppose it.
Mr. Rowntree: We can stipulate as to that for their purposes.

Mr. Rayson: But, your Honor, getting back to this other, the only possible connection it could have here, as Mr. Rowntree has pointed out, is with this so-called union shop provision. Now the 1947 contract, a contract executed before this alleged conspiracy, contained such a provision.

In 1950, as the proof is positive, such a provision was taken out. Now the history of this provision and this lawsuit has been one of absolute retreat from position to position, and we say now that the law is changed so much that he has no position left on this point; your Honor, and that the only discussion, the only purpose of any discussion of a union shop clause at this point, in face of controlling law, is to prejudice the jury.

The Court: Now, Mr. Rayson, as I understand Mr. Rowntree, he has one point in mind in offering this proof.

The point is that the big operators contested the union on the point up to 1950 or '49. After that period the big operators didn't contest the union with respect to
630 that point, so that he says that does have a bearing on whether or not there was an agreement between the big operators and the union, the purpose of which is to favor the big operators and to drive the little operators out of business.

I am not going to intentionally let Mr. Rowntree put in any evidence here that doesn't have a bearing on this issue of conspiracy, which might, as you say, prejudice the jury. I am not going to allow that under any circumstances, but I can see, if the point that he is making is supported by the evidence, where that might be a little circumstance, howsoever slight, which might have a bearing on this alleged agreement that he is undertaking to show.

That is the reason I am trying to get you men to stipulate, so I can keep out anything about Communism or anything in that regard from the jury, because I think you are exactly

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right. It was well known—I say commonly known, that the reason Mr. Lewis didn't sign this was because he had a principle in mind and he didn't want to sacrifice that principle. The principle was that the Congress had no right to put that clause in, as I recall, under the Constitution, and that his the reason for not signing was not in regard to any labor problem, it was his belief that you were
631 depriving persons of liberty and freedom by forcing them to sign papers like that. Isn't that right? Isn't that his position?

Mr. Rayson: I don't know whether his principle went into constitutional objections to it. I frankly don't know. I know that he felt as a matter of principle that Congress should not have enacted such a statute to single out labor organizations for that purpose.

The Court: What the Court has said comes from a vague recollection of hearing something about it years ago. I don't have any definite recollection about it.

Mr. Rayson: We want to say this. The point of our objection is not aimed simply at the evidence as to the United Mine Workers' actions with regard to the Taft-Hartley Act reporting provisions in 1947 and afterwards. We say that is not competent evidence. We further say that this evidence about the union shop provision is not competent evidence.

If your Honor will recall, when this suit was first filed, and when Mr.—

The Court: I don't think it has anything on earth to do with the issues in this lawsuit, unless it has a bearing on the attitude of these big operators before 1950 and
632 the operators towards the union after that. It might shed light on whether or not there was or was not an agreement between these big operators and the union.

Mr. Rayson: Well, your Honor, this final point. The clause, I would say even Mr. Rowntree would agree that this clause is a legal clause. It was changed in 1950, at the

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time he says the conspiracy started from an illegal clause to legal clause.

The Court: Mr. Rowntree, I am not going to let you go into these details about Communism and you might as well understand the Court right now.

Mr. Rowntree: We are willing to stipulate some general stipulation.

The Court: All right. If you will stipulate some general stipulation, I will keep all of this out of the record. I don't intend to let it go into these matters, except for what bearing it may have on the attitude toward certain propositions by the big operators before 1950 and their attitude after that.

Mr. Kramer, you can see that might have some bearing on this alleged unlawful combine which is charged in this cross action. But I don't want to bring in these collateral matters about labor problems that involve labor relations over which the National Labor Board has exclusive 632A jurisdiction. But at the same time, I don't want to deprive him of a right which he has of introducing proof to show the attitude of the big operators before 1950 towards the union and afterwards.

Mr. Combs: May it please the Court, without waiving our objection to the competency or the relevancy of the proof that he is offering, without waiving that, we stipulated at the time of the deposition. We are willing to stipulate now, as we did then.

Our stipulation at that time was this. Now this is without waiving our objection to the admissibility of this evidence at all. We have said repeatedly that we will stipulate that the United Mine Workers did not elect to conform to the reporting provisions of that act, meaning the Taft-Hartley act, as long as that section of the statute was in effect. They did not comply with it, and we will stipulate to that. It is a matter of record. It is a matter of history. There is no argument about it.

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We will stipulate to that. Now that is the stipulation.

634 Mr. Rayson: Your Honor, this point, Mr. Rowntree has insisted that this is relevant in that it shows in 1950 the operators gave the union, by this clause, the right to dominate the men in the industry. Now that's been the repeatedly announced position.

Now that presumes first that the clause was illegal and second that it required all men to join the union at that time, or that as he finally said, after several of these decisions came out, that it unlawfully coerced men to join the union in violation of the Taft-Hartley Act.

Now decisions have established that it could do none of those things, that it could not achieve the purpose originally for which he said in the opening statement, in the pre-trial order, for which he says was its purpose. No, it could not have been its purpose. It could not have been its purpose in 1950 when it was changed from a union shop to something else, when it was changed from a provision then, perhaps, in violation of the law to one which did not

635 violate the law, so we don't see how on earth it can be argued at this point that this clause permitted the union to dominate the men.

And that really is the basis for our reasoning, for saying this evidence is not competent for any purpose in this case, and the jury could not be permitted to draw inferences of combination from that clause.

Mr. Rowntree: Your Honor, the Court has already ruled on that point against us. What we are putting this in for is a restricted purpose at this time.

The Court: Bearing on the attitude, isn't it?

Mr. Rowntree: Yes, sir, showing what kind of deal was made.

The Court: Mr. Kramer, can you stipulate that was a known fact?

Mr. Kramer: Your Honor, at the time we made this stipulation, and we are perfectly willing to make it now, we

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said—however, in agreeing to this stipulation, we agree it is a fact, we object to its admissibility as an item of evidence. We keep that objection, but as a fact, we are willing to stipulate this as a fact.

636 We stipulate that the United Mine Workers did not elect to conform to the reporting provisions of the Taft-Hartley Act as long as that section of the statute—that is the section with reference to the oath—was in the Act; that the United Mine Workers of America did not comply with it; that this is a matter of record, it is a matter of history.

The Court: A matter of public knowledge?

Mr. Kramer: Well, I guess matter of history is the same as matter of public knowledge. Yes, sir, we will say a matter of public knowledge. We are willing to state that.

641 The Court: The Court has tried to hold that you have a right to show anything that bears on a violation of the anti-trust law. But the Court has further held it cannot see how an unfair labor practice in and of itself, unless that unfair labor practice also violates the anti-trust law, has any relevancy to any issue in this case. That is what the Court—

Mr. Rowntree: May I clear up that point, possibly.

The Court: All right.

Mr. Rowntree: It may be an attempt.

642 We have contended all along, your Honor, that the deal—that a phase of this deal that was made in 1950 was a reversal by the operators of their previous contesting of the union's right to dominate these men in the industry, because before that it was hurting these big operators. It was hurting them in the pocketbook, as Mr. Lewis says, before 1950 because he was dictating the working time of the men:

Now in 1950 these operators obtained the right to control

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the working time of their own mines, but they reversed their position about the union shop clause, the welfare fund provisions, because the deal was that this National Bituminous Coal Wage Agreement was to be imposed upon the small mines of the country and the best way to do that was to secure domination of the men in the industry by the union just as was done in this case here.

And this reversal by the operators and going along with the idea of control of the union to the maximum extent over the men, was in line with this conspiracy to impose this contract down on small operators who would not have signed the contract except for these pressures that were put upon them, and because the employee in the small mine obviously is not going to compel his employer to sign a contract which
 643 is going to put him out of business and he will lose his job and lose any rights he has to welfare fund benefits, and whatnot. They are going to lose their jobs.

The best way to put that contract in on the small operator to consummate this conspiracy again, is to have the union have all this domination over the men, all this power and control, that the big operators were previously contesting before 1950. That is our point.

The Court: All right.

Mr. Combs: May I make just one point on that.

The record shows by Supreme Court cases and by cases that are recorded and reported, the record shows that the operators contested the union shop clause in 1948 and 1949, those contracts, to the extent that it was taken to the Supreme Court of the United States.

They had an injunction that was secured by the National Labor Relations Board at the time the 1950 contract was signed restraining the union from even asking for a union shop. That is a reported case. And you talk about the operators reversing their position and giving up their contention
 644 about the union shop is just not—on the record is just not so.

The operators insisted to the point that they went

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to the Supreme Court of the United States, and the union lost, and to say in the face of that and the outstanding injunction that they suddenly gave up the right they fought for and was sustained—the record just doesn't show that.

There is one more thing I would like to say. They raise the question or use this argument of the Taft-Hartley Act, the violation of it. The question here is whether or not that you can use something that is legal and a person has a right to, like in the Hutchison case, that you can use a legal right, a person where he has a perfectly legal right to use in a legal manner, you can't use that in another act to send him to prison. That is what the Hutchison case is.

I say in response to counsel's argument that you can't use a legal right of a party under the law and go over here on another law and say it is an illegal right and send him to jail on that.

This is a civil case, of course, but we must remember that the anti-trust act has criminal penalties. We are talking about conspiracy here and I just don't think that the argument of counsel is correct.

645 He has a right to make it, and I don't think it accords with the facts or what we are talking about here, to say the operators reversed their position and suddenly gave up.

651 The Court: Let the jury return, Mr. Marshal.

(Thereupon, the jury returned to the courtroom and the following proceedings were had in the presence of the jury.)

Mr. Rowntree: May it please the Court and ladies
652 and gentlemen of the jury, will counsel read the stipulation?

Mr. Combs: I can read it.

This is the stipulation entered into by counsel.

Stipulate that the United Mine Workers did not elect to conform to the reporting provisions of the Taft-Hartley Act

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as long as that section of the statute was in effect. This is a matter of record. It is a matter of history and a matter of public knowledge.

Of course, your Honor, that is without waiving our objection.

The Court: That is right.

Mr. Rowntree: Skip to page 100, the middle of the page.

(The reading of the deposition of John L. Lewis was continued.)

"Q. Now, with respect to the language of the 1951 contract on the Welfare Fund, we refer to the contract as set out at page 131, the 1953 minutes.

653 "There was some amendatory language, as I understand it, but still, in the middle of page 131, I see the language, 'All of the foregoing benefits applicable to the individual members of the United Mine Workers of America and their families and dependents and to employees of the operators other than those exempted from this agreement.'

"Also the next paragraph relating to the separate fund for pensions retains that language about 'for the members of the United Mine Workers of America or their families or dependents and such other persons that may be properly included as beneficiaries thereunder.' "

Mr. Rowntree: Both parties agree that the language of the contract speaks for itself.

Mr. Kramer: Yes, this is substantially correct. I don't think it is quite accurate, and we both agreed on taking deposition that the language of the contract speaks for itself rather than someone's conclusion thereof.

The Court: All right.

Mr. Kramer: That is our position now.

(The reading of the deposition was continued.)

"Q. Mr. Lewis, I might state our contention. Our contention is that only union members have participated in the Welfare Fund after 1950 the same as before 1950.

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"I point out the affidavit of Miss Josephine Roche. In paragraph Number 7 of the affidavit filed by Miss Roche, sworn to June 7, 1960, she states:

"The sole requirement to receive pension benefits or any of the other benefits of the Fund, or the retention of said benefits, is compliance with the eligibility requirements for each benefit and the continuing compliance with said eligibility requirements, none of which requires the applicant or beneficiary to be or retain his membership in the United Mine Workers of America or to perform any service for the United Mine Workers of America, any bituminous coal operator, the Trustees of this Fund, or any other person or entity."

Mr. Rowntree: Miss Roche is a trustee plaintiff in this case.

(The reading of the deposition was continued.)

"Do you agree with that statement of Miss Roche? "A. Yes.

"Q. I point—"

The Court: I didn't catch that. Would you read that again?

Mr. Rowntree: She states here that the only requirement for eligibility to receive pension benefits is compliance with the eligibility requirements for each benefit and the continuing compliance with said eligibility requirements, none of which requires the applicant or beneficiary to be or retain his membership in the United Mine Workers of America.

That is her statement in response to our interrogatory. I asked this witness:

(The reading of the deposition was continued.)

"Do you agree with that statement of Miss Roche? "A. Yes.

656 "Q. * * * We point out Resolution No. 20, found in United Mine Workers Journal for September 1, 1948, pages three and four."

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Mr. Rowntree: And we wish to introduce this as exhibit 33, being United Mine Workers Journal, September 1, 1948, pages three and four.

(Exhibit No. 33 was marked for identification and filed.)

Mr. Kramer: Your Honor, we object to the introduction of this instrument. This instrument does not deal with the Welfare and Retirement Fund here involved. It is an entirely different fund. The Welfare and Retirement Fund involved here comes under the contract of 1950, and it is the Welfare and Retirement Fund of 1950. This deals with a fund that was previously in existence under a previous contract and has nothing to do with the current fund. We think it is irrelevant and immaterial, and we object to its introduction.

657 The same is true, your Honor, with reference to the rules and regulations that dealt with that. We are dealing with the 1950, with the averment of the plaintiffs that the conspiracy started in 1950, at some time subsequent to this resolution, subsequent to the fund that they are talking about in this offer of evidence. We think it is irrelevant and immaterial and it is confusing and should not be admitted.

Mr. Rowntree: If your Honor please, I don't know about this reference to two different funds. I don't know whether there is a different fund or not. It is hard to say whether the previous fund terminated or whether it did not. But anyway, the parties are pretty much the same, with Miss Roche a director of the fund in 1948 and Mr. Lewis was on the trustees in '48.

We asked for copies of the resolutions pertaining to pension benefits. This is the best we can get from what we can find.

658 The Court: Does this resolution deal with pension benefits?

Mr. Rowntree: Yes, sir.

The Court: Objection overruled.

Mr. Kramer: May I state this about counsel saying they

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were not informed. The collective bargaining agreement of 1950, by its own provision—my copy doesn't seem to be here this morning—by its own provisions terminated the 1948 fund. It is entirely at an end. The provisions for handling the 1950 fund begin with a new fund. It is the provisions of the 1950 fund they say is the basis of conspiracy. It is not the 1948 fund. Counsel has simply forgotten reading those contracts, because the contract itself terminates it, and I can't see how what was done with the previous fund—

The Court: There may be a pattern involved, and if there was anything that occurred prior to 1950 that indicates a pattern and that the pattern continued through the alleged conspiracy for the period, it would be competent for whatever bearing it may have, if any, on the alleged conspiracy.

Mr. Kramer: All right, Your Honor. The objection we make is on behalf of both parties, the trustees and 659 the United Mine Workers of America, though the United Mine Workers may not be directly involved.

The Court: All right, overruled.

Mr. Rowntree: Now this is a 1948 resolution, and the jury should bear that in mind, as stated by counsel.

"Resolution 20." And I will read excerpts from it.

"Now, therefore, be it resolved, the following regulation," this is a resolution of the trustees of the fund—"Now, therefore, be it resolved, the following regulations shall govern the payment of pensions to the United Mine Workers of America and shall be subject to amendment, revocation and restriction at the discretion of the trustees.

"Eligibility. Any member of the United Mine Workers of America who is otherwise qualified and who retires from the bituminous coal industry on or after May 29, 1946, shall be eligible for pension.

"Proof of membership. The local union where applicant is last a member shall as to membership of applicant.

660 "Districts of the United Mine Workers of America shall also certify to membership of the applicant.

"The International office of the United Mine Work-

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ers of America shall have final authority to certify as to membership of applicant

"Service provision. Any member of the United Mine Workers of America who on or after May 29, 1946, has completed twenty years service in the coal industry and is otherwise qualified shall be eligible for a pension.

"Proof of service may be accomplished in any of the following ways:

"One. Certifications by a local union or by local unions, or by districts of the United Mine Workers of America that an applicant served in the coal industry, shall be deemed to be satisfactory proof of service for the period or periods covered by such certifications."

661 Mr. Rowntree: I will pass this exhibit to the jury.

Mr. Kramer: Which exhibit is that?

Mr. Rowntree: That is the last one.

Mr. Kramer: Of course, Your Honor, we have no objection to exhibits which have been introduced being passed, but we object to it being passed on the basis it was inadmissible in the first place.

(The reading of the deposition was continued.)

"Mr. Rowntree: Now, I would like to have filed as the next exhibit number the text of any resolution on pension eligibility, for pension benefits, or other welfare

662 benefits, that are fully set forth in the United Mine Workers Journal for any later period of time.

"If there is such a publication of the text of any later resolution, will counsel file that?"

Mr. Rowntree: Does counsel have such?

Mr. Kramer: No, sir, I do not, because they are dealing with the 1948 contract which we say had no bearing on this, and I have no such resolutions. We will have appropriate proof of the 1950 agreement which is the only one involved.

The Court: Now, Mr. Rowntree, you expect to connect these matters up that relate to the period prior to the for-

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mation of the alleged conspiracy, and do you expect to show that the tenor of this resolution was followed through—

Mr. Rowntree: Yes, sir.

The Court: Into the alleged conspiracy period?

Mr. Rowntree: Yes, sir.

The Court: And that a pattern was started back prior to the period?

Mr. Rowntree: That's correct, yes, sir, and—

The Court: All right.

Mr. Rowntree: And we are starting that right now. We think the purport of this question clearly means copies of resolutions set forth in the United Mine Workers that
663 goes to the mass of the men in the industry. We wanted copies of later resolutions pertaining to the '50 contract or anything, and later amendments that are fully set forth in there so that the membership could see whether or not there was any change in these requirements. That is why we asked this question.

Mr. Kramer: Your Honor, it is our position that there was a change in policy just as there was submitted here, that 1950 contract contained a different language. At one time union membership was required, in '47 and the earlier contracts, but beginning in 1950, union membership is not required for benefits under the 1950 contract.

The Court: You mean union membership was required prior to 1950 to draw the welfare benefits?

Mr. Kramer: At one time it was, Your Honor, but it has not been required at any time since the beginning of this alleged conspiracy, and our proof, we say, Your Honor, will establish the fact that benefits are being paid and have been paid since 1950 to people, as was stated the other day on the witness stand, who were employed by signatories of the contract, whether or not those individuals were mem-
bers of the union, and without contradiction, I say,

664 Your Honor, our proof will so establish.

The Court: All right.

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Mr. Kramer: And I am talking about a 1950—

Mr. Rowntree: Now here, Your Honor, we can draw a sharp issue of fact.

Mr. Templeton: Your Honor, I would like to be cleared up whether or not it is admitted or stated that union membership was required for the 1948 contract.

The Court: He stated that prior to 1950 that union membership—

Mr. Templeton: He stated prior to 1950, but I understood the exhibit was on the '48—he said it was required in '47, but I didn't understand him to say it was required in '48.

The Court: I understood Mr. Kramer to say it was required before 1950, but not after 1950.

Mr. Kramer: Not up to 1950. I'm not sure. At one time was my language. I think Your Honor will recall. I do not say after 1948, I am not sure of that date, but it certainly was not after 1950, but at one time, it was required. We say that was immaterial because of the change of policy after the Courts passed on it. I don't believe that date was 1950, but I cannot state what it was, but it has not been required since 1950.

665 Mr. Rowntree: If Your Honor please, to clarify the issue of fact that's being drawn, we have not seen any resolution after this one being introduced here. We asked for it and haven't gotten it.

Mr. Kramer: May it please the Court, just a moment. The only request we made was under the contract of 1948. I don't think any request was ever made—if it was, I misinterpreted it—since the 1950 contract.

Mr. Rowntree: No. Do you insist?

Mr. Kramer: I think that was it.

Mr. Kramer: I may be mistaken with reference to the request, Your Honor, but there's been so much to this record, but we insist that prior to that time it was irrelevant anyway.

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Mr. Rowntree: We are saying that as far as the outsiders are concerned, outside the immediate family of the Board of Trustees, there is a broad impression in the industry that the membership is required, that is a matter of actual practice.

(The reading of the deposition was continued.)

666 "Q. Now, Mr. Lewis, Mr. Val Mitch was General Counsel of the Trustees of the Welfare Fund? "A. Yes.

"Q. And he gave legal advice with respect to the law of the statute and the law of the contract and other types of legal advice to the trustees, I take it? "A. Yes."

Mr. Rowntree: We introduced at that point an affidavit of Mr. Mitch as general counsel of the trustees.

(The reading of the deposition was continued.)

"Q. Referring to his statement, in answer to a question in a case pending before the Court in Washington at page five, he was asked as to how he read the contract."

Mr. Rowntree: This with respect to the contract provisions on benefits, particularly of pensions. I read his answer.

"I read it that "all of the foregoing benefits are to be made available to members of the Mine Workers who are employees of the operators signatory." I don't think it could be any other way, in my opinion."

"Is that the nature of his advice to the trustees with respect to the meaning of this contract?

"Mr. Combs: At what time?

667 "Mr. Rowntree: I'm talking about the contract of 1950, particularly the provisions with respect to the benefits of the Welfare Fund."

"Mr. Kramer: Mr. Lewis, he is referring to a statement, allegedly a statement taken from Mr. Mitch, in another law suit, the Lachetti case."

Mr. Kramer: That is not an affidavit, Your Honor, in the

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present lawsuit. It refers to the statement made in the Lachetti case, and filed in the interrogatory here, and he said yes.

Mr. Rowntree: In the form of an affidavit.

Mr. Kramer: That's correct, in another lawsuit.

(The reading of the deposition was continued.)

"The Witness: I take it that Mr. Mitch's reply was impromptu in the case, wherein specific facts and considerations were involved, and that Mr. Mitch's reply would naturally cover—although not expressly stated—the previous statement of policy read into this record 'and any other persons properly qualified.'

668 "Q. Now, Mr. Lewis, we said a while ago that we contended certain things were done in order to tie the Welfare Fund to union membership and to operations by the union.

"One thing we contended was that the Union sought to control the Trustees; and we have discussed the position of the operators in their statements with respect to your seeking to name trustees for the operators and for a neutral trustee.

"And we point out the statement of Mr. Love at page 125 of the 1952 Convention, made after the signing of the 1950 contract, where he says:"

Mr. Kramer: Just a minute. I object to this statement for the same reasons made on yesterday. It is a statement of a third party in an effort to prove conspiracy before proof of a conspiracy has been submitted—prima facie evidence of the conspiracy has been admitted aside from the statement of an alleged conspirator.

Mr. Love was not an officer or member of that association. He may have met with someone that was involved as another alleged conspirator.

The Court: Members of the jury, you will not consider the statements made by Mr. Love for any purpose unless you first find from the preponderance of the proof

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669 in this case that there was a conspiracy to which the United Mine Workers and one or more of the large coal operators were parties and that the statements made by Mr. Love were made in furtherance of the alleged conspiracy.

With that explanation the objection is overruled.

(The reading of the deposition was continued.)

Mr. Rowntree: I quote:

"The union asked for a cooperative administration of the Welfare Fund."—"A. You are reading on page what, now?

"Q. 125. "A. The middle of the paragraph?

"Q. That's right.

"The union asked for a cooperative administration of the welfare fund and we are giving it to them. We will help every'"—

Mr. Rowntree: This is a short time after the signing of the 1950 contract.

(Continuing) " 'We will help' "—

Mr. Kramer: That statement is not in the quote.

Mr. Rowntree: That is right. It is in the exhibit though.

Mr. Kramer: Let's read the quote and then get
670 the explanation so we will know what we are reading because of the nature of the objection, which I continue, and I think in order for the objection to be effective I have to have the quote as it is.

(The reading of the deposition was continued.)

" 'We will help every way possible to make this huge fund a definite credit and benefit to the industry. However, the responsibility is squarely on the shoulders of the union and, if it fails, the public and ourselves will look directly to the union.' "

Mr. Kramer: That is a typographical error. It is "at the union" in the record.

Mr. Rowntree: At the union.

(The reading of the deposition was continued.)

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"Do you know what he meant in that statement?"

671 "The Witness: I assume that what was in Mr. Love's mind was purely an assumption, based however upon a considerable background of knowledge, Mr. Love and his interests. It was merely an evasion of responsibility on the part of the operators and an attempt to save face publicly."

672 "Q. The 1950 contract is shown on page 130 of the 1952 Convention Minutes, at which page it names the Trustees of the Fund under the 1950 contract. I believe that you were named as a trustee.

"Q. We have gone over the position of the operators in those negotiations that Judge Dawson be named as Trustee for the operators, but Mr. Charles Owens was named in the contract for the operators. That's right, isn't it?

"The Witness: Yes, he was named and seated.

"Q. Do you know if a problem came up in the signing of the 1950 contract as to who would advise Judge Dawson that he had been displaced on the Welfare Fund?

"Do you recall any problem arising with respect to somebody's communicating with Judge Dawson and advising him that he had been removed? "A. No, I do not; for the reason that he was never seated. He couldn't be
673 'removed' when he had never occupied the position.

"Q. And I believe Miss Josephine Roche was named as neutral trustee in the 1950 contract. That is right isn't it? "A. So the record says.

"Q. Miss Roche answered Interrogatory Number 32, the Interrogatory being:

"What is the connection of the Trustee Josephine Roche with the United Mine Workers of America, and what has been her connection with the union in the past?"

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"Her answer is: 'Trustee Josephine Roche has no connection with the United Mine Workers of America, and has never had any connection with the United Mine Workers of America, except that as president of the Rocky Mountain Fuel Company of Colorado she executed various national bituminous coal wage agreements with the United Mine Workers of America on behalf of that company.'

"It is true, is it not, Mr. Lewis, that the United Mine Workers of America owned 222,720 shares of the stock of the Rocky Mountain Fuel Company at the time that Miss Roche was named as neutral Trustee? "A. It is true that the United Mine Workers of America, and some of
674 its subdivisions, owned some stock in the Rocky Mountain Fuel Company. As to the number of shares, I am not advised. And they were acquired subsequent to the closing down of that company and while it was in liquidation, and it is a non-operating, non-producing coal company.

"Q. Do you know when it closed? "A. And it was somewhere near the time when Miss Roche became a trustee but she was no longer an active operator representing the industry and the company was not operating, and that was considered to be no barrier, while in every other respect she qualified as the neutral Trustee representing the public interest.

"She was recognized as the best qualified person that was available for the public trusteeship. She had been Assistant Secretary of the Treasury. She had charge of the activities of the Public Health Service of the United States during that time. She had served on inter-parliamentary committees who wrote the Social Security Act; representing the Treasury Department on the inter-parliamentary committee that revised and rewrote from time to time what ultimately became the Social Security Act passed by Congress.

"She was a recognized authority on social work and public welfare.

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675 "She was then Director and Administrator of the Fund.

"And both of the negotiating parties, which took in the operators and the mine workers, recognized her as the best qualified, most authoritative, and most capable of anyone we knew in directing the enormous work of the Welfare Fund.

"Therefore, she was unanimously agreed to in the joint negotiations, which took it out of controversy and out of the realm of uncertainty.

"Q. She had been serving as Administrator of the Welfare Fund? "A. She was Director and the Administrator in charge of all of the organizations. She set up the subdivisions of the Fund. She selected all the subordinate executives of the Fund. She had general charge of all the workings of the Fund and its obligations contractual-wise and public-wise.

"She was not in any sense a candidate of the United Mine Workers of America.

"Her profession had been, for some years, as president of a large operating coal company. In that capacity she was a member of the Colorado Operators Association—Coal Operators. She was a coal operator, bona fide, and so recognized. But she had retired from that interest
676 and her company had gone into receivership about that time. There may be a lapse of a month or two there, or some period of time, overriding those dates.

"But it was self-evident in the industry that the Rocky Mountain Fuel Company was not going back into production of coal.

"Q. While she was administrator of the Welfare Fund in the period before the 1950 contract, the Welfare Fund was operated to give benefits exclusively to Union members? "A. For what? Operated for what? Exclusively for what?"

Mr. Rowntree: The question was repeated.

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"The Witness: That all depends again on these arrangements that were made and the sequence of the dates. I couldn't be responsible for that question.

"Q. And she had been your administrative assistant to you as Trustee, of the Welfare Fund? "A. No.

"Q. In that period? "A. No. She does not occupy that post. But she is a director and a Trustee of the Fund in her own right.

"Q. But she had been administrative assistant to you before she became director of the Fund? "A. When
677 she came in as a director for a brief time she occupied the position of administrative assistant to this Trustee, but, with the changes in the trusteeship of the Fund, she assumed a larger and larger range of duties and was increasingly relied upon by the trustees as the Law and the Prophets on all of the interior or inter-departmental matters of consequence on which the Trustees wanted information and advice.

"Q. It would be hard to find a person who was a better friend of the United Mine Workers of America than Miss Roche? "A. Again you ask an interrogatory based on your conclusion, and I wish to say to you that there are no personal equations of any character involved in Miss Roche's trusteeship or the feelings or private emotions of this witness. It is purely a business proposition of what is best for the United Mine Workers Welfare and Retirement Fund as the law exacts from a Trustee—that feeling; the laws governing charitable trusts and such agencies.

"And may I say this, sir: That a Senate Committee authorized by the United States Senate to investigate Welfare Funds, did investigate the United Mine Workers Welfare and Retirement Fund. The chairman of that committee was Senator Douglas of Illinois.

"Their agents had made available to them every
678 piece of paper in the Welfare Fund and their trusts. They spent considerable time in researching into the

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records and the decisions and the findings and the awards and the usage of the money of the Welfare Fund.

"They found everything in order.

"Mr. Combs: Would you like to refer to the conclusions, Mr. Lewis?

"The Witness: At the hearing before Senator Douglas' Senate Committee, at which time this witness testified and Trustee Roche testified and Mr. Charles Owens was absent but wrote a letter of affirmation associating himself with the testimony of Miss Roche and myself, Senator Douglas had his chief investigatory agent give a resume' of their report to the Senate Committee, made public at this hearing, and read their Findings of Fact and Conclusions made to the Committee.

"I wish to read those Findings, on page 191 of the Welfare and Pension Plan investigation, under the chairmanship of Senator Douglas.

680 "The Witness: Senator Paul H. Douglas, on April 6, 1956, transmitted to Honorable Lister Hill, Chairman of the Committee on Labor and Public Welfare, the report of his subcommittee on the investigation.

681 "The conclusion and appraisal of the program, contained on page 191 of this document—final report by the subcommittee on Welfare and Pension Funds to the Committee on Labor and Public Welfare of the United States Senate.

"Pursuant to Senate Resolution 40, as extended by S. Resolution 200 and S. Resolution 232, 84th Congress:

"This program—that is, the United Mine Workers' program—is honestly and well administered; in fact, the medical program is outstanding. The provision of pensions to retired miners, death benefits to survivors, and the comprehensive hospital and in hospital care to all miners and their families is of incalculable benefit to the beneficiaries.

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“The Fund provides these benefits efficiently and at a low administrative cost. Less than three per cent of Fund contributions. The end result could probably not be achieved as well or at lower cost by any other set of arrangements.

“Insofar as can be judged within the time available for the survey, the pension plan is carefully administered, with pensions given to those who meet the eligibility requirements established by the Trustees, and withheld from those who do not. The medical program, taken in all, can be characterized as not less than excellent. The program provides to beneficiaries all needed care in serious illness, virtually without exception or limitation, and gives them complete protection from the risk of heavy medical expense.

“Much effort is being made to assure that the care is of high level quality.

“The medical program is administered by an outstanding group of individuals. Its administrative cost is very reasonable. The decision of the Fund to build a chain of hospitals to provide service to beneficiaries appears to have been well taken, and the hospitals should do much to raise the level of care available to miners in these areas. The building of these hospitals is an indication of the imaginativeness, boldness and vigor, with which the medical program has been conceived and operated.

“It is believed that the medical program would benefit if it made public data on the hospitals utilization rates and costs, incidence of surgical operations; and average payments for selected operations and services.

“No appraisal by outsiders of the operation of the self-insured medical program is possible without such data. However, these defects, if indeed they are defects—and they are matters upon which wide differences of opinion are possible—are of small consequence to the total picture, which is that of a far-flung, pioneering,

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and well run program of immense value to its beneficiaries.' ”

684 The Witness: “And may this witness say that, as I sat here and heard that conclusion testified to by the experts of the Senate committee, I was filled with a pardonable pride to be associated with Trustees who were deserving of such praise. Entirely aside from all humane considerations and the incalculable value of these services to nearly a million potential beneficiaries, with an organization of the size and magnitude of the Welfare Fund, at the lowest administrative cost of any similar organization throughout the United States of America and within the confines of the civilized nations of the world.

“To Miss Roche the major part of the credit is due. Trustee and Director of the Fund. As a superlative executive with outstanding abilities and capabilities. Rich in mature experience. With a devotion to her task that exceeds all normal bounds. The credit is due.

“And may I say that to my personal knowledge, Miss Roche, in all those years, has not even taken a week's vacation from her duties.

“Greater service and devotion to a task is beyond my comprehension.

“She has earned the commendation of the industry.

685 “At no time since she was made a Trustee by joint negotiation has there ever been a suggestion made by representatives of the coal companies or anyone else that she be supplanted; and no criticism of her work has been heard in those selfsame meetings.

“And with that certificate of character for Miss Roche and for the Trustees and for the staff and for the cooperating operators.

“I rest.

By Mr. Rowntree: “

“Q. Mr. Lewis, this is a large Fund. Does it not collect

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as much as a hundred and fifty million dollars a year? "A. Well, with every hesitation about quibbling with you on a matter of three million, I think it is one hundred and forty-seven million.

"Q. A hundred and forty-seven million. "A. Was a maximum at a time of the utmost production in that period of years on the part of the coal industry.

"Q. This money does come from the operating companies who signed the contract? "A. No.

"Q. Well, it comes from the possession of the men in the mines which produced the coal? "A. It comes from the public purse that buys the coal, and is a tax deductible item to the operators. There is no operators' money
686 in it.

"Q. And the benefits, from a Fund so large, are bound to be great to the beneficiaries? "A. Well, the first five thousand mothers who gave birth to babies after the hospital strings opened resulted in not one death in those maternity cases, which is a statistic unheard of and undreamed of in that area where maternity deaths in childbirth were the highest in this nation by a wide, wide margin.

"That is only one statistic. There are great numbers of them.

"Q. Well, I must say, Mr. Lewis, you have painted a very impressive picture of the work of the Fund. I want to say that we represent clients whose employees do not participate in the Fund and we are looking after the interests of such people as that in this case.

"And we get back to these questions that we have been discussing here.

"Is it not true that a large part of the saving of costs by the Welfare Fund is attributable to the fact that the Union itself is doing a lot of the administrative work in connection with the handling of applications for benefits? "A. Naturally the Union would cooperate and naturally that would effectuate some savings on the Fund.

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687 "Naturally the Fund could not have accomplished the program, which has been enumerated, without that cooperation; because it would have required the building of a huge administrative organization in every state in the union, coal producing or otherwise, to safeguard the expenditures and prevent the looting of the Fund by selfish interests in the medical world.

"The Fund has had opposition in the realm of medicine, chiefly because it would not tolerate medical inefficiency and chiefly because it would not tolerate expensive charges for medical services, surgical operations, and hospital treatment.

"But by no means did the cooperation of the United Mine Workers of America account for the low administrative costs of this Fund.

"I might point out the fact that the Trustees of the Fund have utilized all possible revenues from the reserve fund by prudent investment, as becomes Trustees; and there have been years of operation of the Fund when, in truth and in fact, the beneficiaries were receiving one hundred per cent of the 40 cents per ton paid in by the signatories to the contract.

688 "So if virtue is a virtue and if it be true that you can aid a coal miner to the advantage of his employers and the advantage of the public, in that manner and with that degree of efficiency, then I submit, aside from any moral considerations or any biblical or spiritual obligation, it is a good thing.

"And may I point out that increasingly the coal companies themselves are taking intense personal pride in their participation in this meritorious project. They stroke themselves with satisfaction at times and point out to their friends and neighbors 'see what I am going to abate human agony; to soothe the suffering; to eliminate the pain of illness on the part of human beings; to increase the life expectancy of the individual'; because it is mathematically true, on research and the record, that the pensioners are living

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longer lives than the normal expectancy before the Fund was created.

"So there is no domination of the Welfare Fund by the United Mine Workers of America or its Trustees.

"I rest again.

"Q. Well, this question I asked just before that relates to our contention that among the things that were established in 1948 to tie the participation of benefits to Union membership and to tie the operation of the Fund to the Union including the processing of Welfare applications to the Union organization.

"We point out Interrogatory Number 20 addressed 689 to the Trustees, which was objected to. Interrogatory Number 20 was, 'File copy of application blanks commonly used by applicants for pensions and hospital and medical care benefits under the provisions of the Welfare and Retirement Fund.' "

Mr. Rowntree: We offer application for benefit forms as Collective Exhibit 34.

(Exhibit No. 34 was marked for identification and filed.)

Mr. Kramer: The original objection was withdrawn.

Mr. Rowntree: I will read extracts from the forms, your Honor. We can pass those to the jury.

(Exhibit passed to jury.)

Mr. Rowntree: At the top of a form headed "Application for Pension", under the caption "Welfare and Retirement Fund, United Mine Workers of America," a line saying, "All questions must be answered. Failure to do so will delay processing." The first question—

Mr. Kramer: Failure to do what?

Mr. Rowntree: "Will delay processing.

The first question: "District Number, blank. Local Union Number, blank."

690 I might state, your Honor, that this bears a date down at the bottom of November 20, 1957.

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There is another sheet and headed at the top "employment Record", giving a number of blank spaces for periods of time worked, including certain information about each period of time, with a column local union number. On the back of the form "Application for Pension", is a place for certification.

"Certificate of Local Union. This is to certify that the above applicant is currently a member of Local Union Number, blank, and has been a member of this Local Union since the blank day of blank, year blank."

A place for the local union seal, a place for the signature of the local union officers, two officers.

Under that certificate is "Certificate of District. This is to certify that applicant is a member of District Number, blank, United Mine Workers of America." With a place for authorized district signatures.

691 Mr. Rowntree: Now one of these copies is for the local union office; one of the copies is for the district office. There is included in the exhibit, application form 85-HS which is for medical and hospital benefits. Up at the top, "Member's Social Security Number," a space for district number, local union number, blank, a space for member's signature, a statement at the bottom of the top space, "Not valid for a widow or her children sixty days after the death of the member."

In the body of the application itself, it has a space, check-off number. One copy of this form goes to the local union office. On the back of the form is "Local Union Certification. —This is to certify that we the undersigned officers of local union, blank, located at, blank, have examined the above application and have knowledge that the applicant has answered questions one, two, and three regarding employment correctly, and is a member in good standing. He has been a member of this local union since the, blank, day of, blank, year, blank." Space for president's signature, local union number, blank, and the vice-president and financial secre-

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tary, a place for the local union's seal, a space headed as follows: "The following to be completed by district
692 official—Is the applicant's present employer a signa-
tory to the National Bituminous Coal Wage Agree-
ment of 1950, and to the National Bituminous Coal Wage
Agreement of 1950. Yes, blank. No, blank."

"This is to certify that the above miner is a member in
good standing of the United Mine Workers of America dated
the, blank, day of, blank, 195, blank. Authorized district
signature."

There is a form attached, "Request for changes on form
85-HS." Starts off at the top, "From local union, blank,
district, blank." A space headed "Members identification."
Next space starts off, "Information about the miner." First
—it is labeled number two here, "Member died on, blank;
number four, miner is no longer a member of UMWA; num-
ber five, member has married or remarried; number six,
member transferred out of local union, blank; number seven,
member transferred into local union, blank." At the bottom,
"Local union seal, local union officer, and recording section
a space for the district."

693 Mr. Rowntree: May it please the Court, ladies and
gentlemen of the jury, may I point out the statement at page
254 of the minutes of 1952, part of the International officers
report to the convention of 1952 under the heading,
"UMWA Welfare and Retirement Fund," where it is
stated:

"Determination of eligibility of an applicant is the sole
responsibility and function of the Fund, with the one excep-
tion of certification of union membership which is strictly
the province of the union."

(The reading of the deposition was continued.)

"A. As affecting, of course, Union members and relating
only to Union members.

"Q. But the statement that the Union has exclusive

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694 responsibility for certification of union membership.

"A. Certainly. Exclusive responsibility as affecting validity of membership.

"Q. That requirement and that function had significance with respect to the Welfare Fund applications? "A. Only insofar as there was available, through the United Mine Workers, supplemental proof of the validity and authenticity of the averments made by the applicant.

"There was no other way than to have some agency—to determine those things except to have some agency, namely the local union, which had general knowledge of the individual and perhaps intimate personal knowledge of him, the officer thereof. To aver to the soundness of the application. And the fact that he was a member or not a member would affect, of course, their interest in the case. Because if he was a non-member they would have no interest in him. They were not empowered to represent him or they were not empowered to pass upon his destiny as an applicant. Only the fund. All perfectly logical and all for business and sound procedural reasons.

"Q. The Welfare Fund application which we have exhibited—"

"—is captioned 'Welfare and Retirement Fund', and it does contain, in numerous places, spaces for certification of union membership by various union officers.

695 "What would the Welfare Fund be interested in union membership for? "A. Because that carried with it the fact that a Union officer would have more knowledge of that individual, and his record in the industry, than any other agency from which the fund could get information.

"I suppose counsel has contemplated that literally tens of thousands of applications for pensions and other benefits have been made by individuals who listed fraudulent averments in an attempt to qualify; especially individuals who had worked for a great many employments during their

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alleged term of service in the industry.

"And we found, and that fact is emphasized in some areas, that the average individual—ill-disposed to preventing someone from getting a Fund benefit or taking the responsibility in the community of so doing—would easily agree that the facts of the petition were as stated; whereas, investigation through the Local Union, and from time to time with special representatives of the Fund, may have found that those averments were untrue.

"We have even found coal companies who wrote in certificates of employment contrary to the record and the facts, to assist individuals to get a pension who were not qualified to do so.

696 "And these were the agencies through which the Fund worked because ninety-nine per cent or more of the applications were from members of the United Mine Workers of America.

"It is purely a modus operandi, a procedural technique designed to protect the other beneficiaries of the Fund by preserving the basic integrity of the Fund and not wasting the money.

"Q. You say, Mr. Lewis, that the integrity of the application is judged by the certification of the Union officers with respect to the individuals' affiliation with the Union. Is that the substance of what you have said? "A. Not in toto, only in part. Because the Fund avails itself of any other sources of information that it can find that has knowledge on the subject.

"We interview coal companies and their agents.

"Some of these coal companies, where employment records were averred, are long defunct. Proof of the existence of those coal companies was oftentimes necessary.

"In certain instances awards have been made on the preliminary evidence available, and later research and prudent effort has turned up testimony to show that the basis of the application form was inaccurate, improper, and they have been cancelled in great numbers. All with due

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respect to the interest of the Fund and without regard to whether it is pleasing to a coal company, a local
697 union, or members of the United Mine Workers of America.

* * * * *

“Q. Now the answer of the Trustees to Interrogatory Number 26— “A. It may interest you to know that this Trustee has not seen or read any of the responses to the Interrogatories as filed or the Interrogatories themselves.

“Q. All right, sir. “A. It has been done administratively by—

“Q. Miss Roche answered these, I believe. “A. —the administrative staff of the Fund.

“Q. Interrogatory Number 26:

“Describe how and through what officials and representatives of the International Union this literature is distributed.”

talking about literature relating to the Fund.

“The answer of Miss Roche—

698 “A. Are you talking about the press releases or public statements made by the Fund or the annual reports or—

“Q. Literature with respect to requirements for qualifying as beneficiaries? “A. You mean application blanks?

“Q. Yes. Or instructions on— “A. They are made available to any interested party who wants to apply through the secretary of the local union or through direct correspondence.

“Q. Now, Mr. Lewis, quote again this Interrogatory Number 26 addressed to the Trustees.

““Describe how and through what officers and representatives of the International Union this literature is distributed.”

“Miss Roche answered:—

““As trustees, the plaintiffs are without sufficient knowledge and information to describe how and through what officers and representatives of the International Union

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literature pertaining to the Fund is distributed, if such literature is actually distributed by said officers and representatives.'

"Do you agree with that statement: That you didn't know how this literature was distributed through
699 the Union? "A. I don't know to what degree it is distributed. I fancy—I take for granted that some was. Whether all or the requisite amount, I don't know and cannot be responsive."

Mr. Rowntree: We offer for the next exhibit UMW Journal May 15, 1950.

(Exhibit No. 35 was marked for identification and filed.)

Mr. Rowntree: I read excerpts from that exhibit, Your Honor.

Article contained on pages three and four of that edition of the Journal headed "Welfare Fund Restarts Miners' Pensions and Death Benefits Under Revised Rules."

The first paragraph. "Revised regulations covering payment of death benefits and pensions by the UMWA Bituminous Welfare and Retirement Fund which had been approved by the trustees were made effective coincident with a meeting May 2 of Fund and UMWA district officials, where the details were explained and administrative procedures discussed."

Paragraph beginning at the bottom of the page. "Booklets setting forth complete instructions to local unions and
700 UMWA district officials in regard to administrative details of arranging pension and death benefit payments were distributed at the meeting at Fund headquarters and the revised forms were mailed to local unions and district officials."

Three paragraphs down, "In addressing the meeting, Miss Josephine Roche, director, explained that the 1950 Fund is committed to live within its income, as did the previous Funds, and that a most careful study was therefore being given to all projected services to assure that

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expenditures would not exceed the income and that maximum benefits reach the beneficiaries."

Back to the deposition.

(The reading of the deposition was continued.)

"Q. This speaks of revisions of pension requirements but it does not set forth the text of the resolution, the revised resolution, as I can see; but the first paragraph, you will notice, speaks of the meeting of the Fund and UMWA district officials where the details were explained and administrative procedures were discussed.

"So there were meetings between the Fund and Union officials pertaining to the administrative matters of the Welfare Fund; is that not correct? "A. Probably between the administrative staff of the Fund and the presidents of various districts, merely to answer questions about the Welfare items in view of new agreements.

I would so assume.

"I would not know—it was ten or eleven years ago—and I doubt that I was concerned with any of these details of policy. I have no knowledge of it.

"Q. The third full paragraph in the second column indicates that Miss Roche was present at the meeting; does it not? "A. Naturally Miss Roche would be there because she was Director and chief administrative officer of the Fund.

"Q. And the paragraph starting at the bottom of the first column indicates that the literature or booklets with reference to administrative details were distributed? "A. Naturally. Because ninety-nine per cent or more of the applicants were members of the United Mine Workers and it is natural to conclude that the education of that element among the beneficiaries would be the most expeditious manner in which information could be transmitted. Because non-members of the organization get their community knowledge from general conversation and talk—local publications, and so forth—that intimately deal with the United Mine Workers and their affairs.

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"But there is no significance in it whatsoever other than economical administration of the Fund."

Mr. Rowntree: We introduce as the next exhibit United Mine Workers Journal of July 1, 1950, pages 3 and 4.

(Exhibit No. 36 was marked for identification and filed.)

Mr. Rowntree: Reading excerpts from this article. An article headed: "Revised Hospital and Medical Services Approved by Welfare Fund as of July 1."

703 "Administrative procedures and revised regulations of the hospital and medical services of the UMWA Welfare and Retirement Fund to become effective July 1, 1950, were released by Miss Josephine Roche, director, after approval by the trustees. New instructions and forms were forwarded to the UMWA district offices and the local unions for distribution among the membership.

"Under the new hospital and medical care program, members of the UMWA, their wives and dependent children under 18, are eligible to receive hospitalization and medical care in the hospital for most illnesses."

Next; the last full paragraph in that column.

"The revised regulations provide that benefit are available to wives and dependent children under 18 only during the lifetime of the member, which means that a widow and her children are not eligible. Home and office care and drugs other than those used in the hospital are not provided for either the member or any eligible member of his family."

The paragraph starting at the bottom.

"The instructions sent to local unions set forth as the first requirement that every UMWA member must go to his local union and fill out form 85-HS and it is

704 advised that all members should fill out this form at once without waiting until they become ill. Three local union officers must sign and certify the form and affix the seal of the local union, and it is then sent to the district office for certification and processing."

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Next paragraph:

"The form calls for the member's social security number and the signature of himself and wife, together with his district number, local union number, birth date, age, and data about his dependent children under 18. The local union and district certify that he is a member in good standing and when the member receives this properly certified form he, his wife and his dependent children under 18 are then eligible for benefits."

The next paragraph:

"Instructions on how to get hospital care are set forth and the members are advised that upon leaving the hospital patients will be asked to sign their bill which the Fund will pay. In the event a member is no longer in good standing he must return his form to his local union."

Next paragraph:

705 "Complete instructions were also forwarded to the district offices telling them how to process the forms. In a covering letter to each district president, Miss Roche explained that the revised regulations represent the best consensus arrived at after the recent Washington conference of UMWA district and Fund representatives as to what services could be supplied with the funds available."

Mr. Kramer: Just a minute before the answer of Mr. Lewis is read.

I just want to point out, your Honor, that the statements read are from the exhibit all right, but Mr. Lewis is asked a question and answered it and only a portion of what he has now been reading into the record was read to Mr. Lewis in the taking of his deposition, so that there cannot be argued later there is a conflict between Mr. Lewis' testimony and what was read because his explanation only goes to the portion read to him and the last three paragraphs were not read to Mr. Lewis.

Is that correct?

Mr. Rowntree: I think that is correct.

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Mr. Kramer: So I don't want any misunderstanding about it, any alleged inconsistency. I think the answer may be read.

Mr. Rowntree: Bottom of page 136.

706 Mr. Robertson: You haven't read the question yet.

Mr. Rowntree: Well, I just note there I limit it to certain paragraphs.

Mr. Kramer: This is an answer, really, to the paragraphs which were read to Mr. Lewis which were read here, and there are certain additional paragraphs read which were not read to Mr. Lewis when the deposition was taken.

(The reading of the deposition was continued.)

"A. All quite logical and a most logical administrative procedure to build up the files so that when the men became ill there would be no delay in the certification for hospital expenses. In no other way could the Fund operate.

"They had the addresses of the United Mine Workers' local unions. They knew of nobody else who would undertake to disseminate the information outside of the United Mine Workers and no other agency or individual whose services they could invoke to get the word to some individual who perhaps had let his membership in the United Mine Workers drop or who in other ways was eligible for benefits.

"Q. Why be so careful, Mr. Lewis, with regard to certifying a man's membership, with the seal of the union and all those things? "A. Because that gave validity to his record and that is the only reason. Someone who
707 had responsibility. Someone who is qualified to give the information. Someone who possessed the information.

"There was no one else in the community upon whom we could rely.

"Q. Would it not be just as effective for that purpose to simply certify that the man had been in the industry or had been employed the requisite number of years in the proper type of service? "A. No, that would be insufficient because

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that would not carry with it the assumption of the knowledge of this man and his status in the community, and his membership in the union, his employment in the mines had been as it was, continuous or intermittent; it all having to do with his qualifications.

"Q. But the fact that he was a union member had nothing to do with the fact that he was qualified; is that not true?

"A. The fact that he was a union member did not and does not now deprive him—give him any advantage in the award; or, if he is not a member, give him any disadvantage in the award.

"But the United Mine Workers was authorized to represent only its own members; and of necessity, inasmuch as they were the overwhelming number of people who might become qualified for benefits in the Fund, they were obliged to render him and the Fund this assistance. They were the only responsible agency with which the Fund could entrust those duties.

"Q. Well, what about the non-union employees, Mr. Lewis? "A. Provision is made for the non-union members. Awards have been made for non-union members.

"Q. You say that non-union awards have been made?

"A. Oh, yes.

"Q. Well, we call attention to Interrogatories Number 12, 40, and 18, addressed to the Trustees.

"Interrogatory Number 40:

"Give the name and address of an individual who has received a pension from the Welfare and Retirement Fund voluntarily awarded without litigation and who was never a member of the United Mine Workers of America, and state the date such pension was awarded."

"The response was:

"Interrogatory Number 40 is objected to on the ground that"—

* * * * *

712 The Court: The objection is not evidence but the Court will let it be read so that you may understand

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Mr. Lewis' answer.

Mr. Kramer: We will have to note an exception.

(The reading of the deposition was continued.)

"... this interrogatory is oppressive, unreasonable, burdensome, vexatious, onerous, and imposes an undue burden upon plaintiffs for the reason that the records of the United Mine Workers of America Welfare and Retirement Fund of 1950 are not kept with relation to states, counties, or United Mine Workers of America districts, but alphabetically under the name of each beneficiary. In addition, the Fund does not keep records of union membership of each beneficiary and when such information is contained in any of the voluminous files of the Fund the accuracy of such information cannot be vouched for by the Trustees."

"Do you agree with that response?" "A. I have no knowledge of such statements as that."

"I am unable to comment intelligently on brief excerpts taken out of context in special cases that revolve around questions of fact and the validity of averments and
713 allegations made pursuant to the applications."

"So I couldn't answer intelligently anything with respect to that specific interrogatory."

(The reading of the deposition was continued.)

714 By Mr. Rowntree:

"Q. Taking up Interrogatory Number 18."

Mr. Kramer: I think, your Honor, I should point out what we did at that time in view of this. At the time we pointed out this, that the interrogatory directed to the trustees was whether the applicant had ever been a member of the United Mine Workers and not whether he was a member at the time when making application for benefits. In other words, they asked us whether the applicant had ever been a member. That is what we pointed out at the time and that is what the objection was.

The Court: Well, the jury is entitled to—

Mr. Kramer: The interrogatory said who was ever a member and had nothing to do with whether he was a mem-

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ber at the time the application was made, which is the question in controversy. We pointed it out at the time and still insist on it.

(The reading of the deposition was continued.)

By Mr. Rowntree:

"Q. Taking up Interrogatory Number 18:

"'Were any of the recipients of the pensions awarded in 1956-1957 not members of the United Mine Workers of America and, if so, kindly name the same and give
715 their addresses.'"

Mr. Rowntree: There was a similar objection.

(The reading of the deposition was continued.)

"This interrogatory was objected to on the same identical grounds."

Mr. Kramer: I continue my objection as I made earlier, your Honor. What they are asking—the same objection was made. They are asking him to comment on those objections and we have the same objection.

The Court: I think Mr. Lewis is entitled to comment on it.
(The reading of the deposition was continued.)

"A. Well, I would so assume. I think that I would have been one of the chief objectors, myself, had I been present. I can hardly conceive of a more burdensome or oppressive interrogatory.

"Q. Well, now, in the one before that we asked for any member—any non-union participant. We were not asking for a great big long list; we just wanted one, Mr. Lewis.

"Don't you think that you could produce one name?

"A. The Fund is at a disadvantage in that it has no record of the non-union men. We don't know who they
716 are or where they are until they file an application out of the blue sky. So there has to be a complete overall investigation.

"The facilities open to the Trust are narrowed to the representatives of the United Mine Workers substantially, by reason of the contract and by reason that the United

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Mine Workers are only authorized to represent their own membership.

"We have had men who had been out of the industry for twenty-five or thirty years that applied for pensions. We have had court cases on those.

"Q. We point out Interrogatory Number 12:

"Give the name and addresses of any non-union member employees in District 19 who have received benefits from the Welfare and Retirement Fund."

"District 19 is the district that covers East Tennessee's coal mining area."

Mr. Kramer: Skip the comments on it.

Of course, we are continuing the same line of objection, your Honor.

The Court: Yes, sir.

(The reading of the deposition was continued.)

"The Witness: That, of course, would be my own opinion as a layman and as a Trustee, that your statement is correct. And I do not know enough about these interrogatories or the responses or the facts as affecting an individual
717 to be responsive; in the absence of knowledge on my part as a Trustee who did not handle the details of the Fund in dealing with matters of policy.

* * * * *

"Q. The third contention we made pertains to the means of tying the Welfare Fund to the Union; pertains to the International officers of the International Executive Committee passing upon the membership of applicants. This committee which was established in 1948, Mr. Lewis. The functioning of that committee did pertain to the applications under the Welfare Fund, did it not? "A. No. It pertained to all members or former members—"

718 Mr. Kramer: Just a moment. To keep this record straight, I want to again object. Your Honor, notice first in 1948 period—prior to the period of the alleged conspiracy, and we think it is irrelevant and immaterial for

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any issue in this case and is only confusing and may be prejudicial. Therefore, we object to it.

Mr. Rowntree: The subsequent questions carry on over into the 1950 and subsequent period.

The Court: All right.

(The reading of the deposition was continued.)

"A. No. It pertained to all members or former members who may have lapses in their membership or have employment in other industries, who may have left the industry and who desired, for reasons of their own, peculiar to themselves, to reestablish their membership.

"Q. We refer to the statement of Vice President Kennedy, in the 1952 Convention Minutes, pages 487 and 488.

"Mr. Chairman, being the Chairman of the Special Committee set up by the International Executive Board regarding the applications of thousands of individuals whose membership was in doubt and upon which we passed and have been passing for the past four years, I think I am somewhat competent to discuss this matter that is now before the Convention.

"In the first place, when the dollar dues for unemployed members and for those receiving pensions in particular was under consideration by this Convention, it was pointed out that one of the reasons back of this was a very important legal reason."

"Now with respect to that statement we addressed Interrogatory Number 55 to the Union:

"File copy of Minutes of the International Executive Board relating to the establishment of the special committee referred to by Vice President Kennedy on page 487 of the copy of the Minutes filed."

"Answer: 'Resolution of the International Executive Board relating to the matter inquired about in this interrogatory is attached hereto marked Exhibit E.'"

Mr. Rowntree: We filed that at this point.

Mr. Kramer: So there may be no misunderstanding, before these interrogatories we have been discussing have

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been addressed to the trustees. Now he is talking about interrogatories addressed to the United Mine Workers.

Mr. Rowntree: That is correct.

Mr. Kramer: So there will not be any dispute about it later on.

The Court: Yes.

(The reading of the deposition was continued.)

By Mr. Rowntree:

"Q. This exhibit states:

720 " 'Miscellaneous membership in cases of original jurisdiction of Board.

" 'Extended discussion was had, during which there was mention of cooperation with Social Security and its effect upon the determination of these questions.

" 'Board Action: Agreement with President Lewis' suggested procedure that upon receipt of an application under the Original Jurisdiction Clause of the constitution, it would be transmitted to the district for preliminary findings and recommendations; the report would be returned; then, Welfare would obtain the Social Security record; and

" 'Acquiescence in President Lewis' suggestion of the probability of necessarily having to set up a permanent committee and his statement that it could be done administratively without a formal motion.'

"That did relate to applications for Welfare Fund benefits, did it not?

"A. Possibly, but not necessarily; because the organization had no knowledge of the motives of men in seeking restored membership and a member of the United Mine Workers, regardless of his intent or motives, was entitled to a finding as affecting his status in the organization. And a committee could make an investigation of each claimant's request and ascertain the facts through machinery provided;

721 whereas, the Board did not have that information before it at the time an appeal was filed with the Board. The administrative procedure was long in effect and widely utilized.

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"Q. Did this resolution here explain why the Welfare Fund forms contain so many blanks for certification by Union officers of membership? "A. No, not necessarily, at all.

"Q. Doesn't it explain the statement that we have previously referred to from page 254 of the 1952 Convention Minutes to the effect that the Union was solely responsible for the certification of Union membership? "A. No. It merely represents a somewhat ghastly and futile attempt of operating interest to create the illusion that the Union was attempting to do what you say.

"Q. Does not the effect of these various papers, including the resolution, including the Welfare Fund forms themselves, including the statements contained in the United Mine Workers Journal with respect to qualifications for participating in benefits, all indicate to the men in the industry that Union membership is a requirement? "A. No.

"Q. Is it not true that the functioning of this International Executive Board Committee with respect to passing on membership has continued all the way down at least through the 1956 Convention? "A. Oh, yes. The committee is in existence, but the number of applications has been greatly shrunken due to the conditions within the industry.

"Q. And the International Executive Board Committee was passing on applications for benefits with respect to the membership of the individual, in the 1952 Convention? "A. It had no relation whatsoever to the Welfare Fund but to the constitutional rights of the petitioner.

"Q. Well, I refer back again to the resolution, Exhibit Number 12. That resolution does pertain to applications for Welfare Fund benefits, does it not? "A. I do not recall what Exhibit 12 says.

"(After examining Exhibit 12)

"The particular petitioner whose case is under discussion at the time may or may not have had a question before the

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Board, who had displayed that he wanted to come back in order to qualify for an award of some kind from the Trust; but, as Mr. Kennedy says in his testimony or his statement at the Convention, there were large numbers, perhaps thousands of such applications, and in the ordinary case there was no declaration of intent or purpose why he wanted his membership restored other than his desire to do so; because he had a right, as averred, to constitutional redress in the courts of the United Mine Workers."

723 Mr. Rowntree: We refer to the convention minutes, page 155, of '52. There a report is given in the report of the international officers to the convention under the heading "Special Membership Committee", setting forth the number of matters considered during the course of the time since the last convention, and similarly, there is a report at page 27—strike that.

Mr. Kramer: How much are you striking, beginning with the word "similarly"?

Mr. Rowntree: Similarly, yes.

The statement of Mr. Kennedy in commenting on that portion of the international officers' report. This is page 275 of the '52:

"A special Membership Committee was appointed by the International Executive Board and this committee has been functioning for four years. We have handled 11,075 cases, as indicated by this report, which shows the disposition of the cases as such as handled by the International Committee. I think this was a constructive step and that it provided the means whereby we could clear up these cases involving membership, which has become very valuable in the United Mine Workers."

There is a similar report at page —

724 Mr. Combs: Your Honor, may I interject here?

I believe it would be clear to the Court and the jury, if counsel doesn't mind, for me to read that whole paragraph.

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The Court: All right.

Mr. Combs: This is a statement made by Mr. Kennedy and I think it will give some background.

Mr. Rowntree: All right.

Mr. Combs: "At the last International Convention, appreciating the fact that a great number of applicants should be heard with respect to doubtful member cases, where probably mistakes had been made by the member or by the Local Union Secretary or by the District or by the International Union, it was felt that some means should be provided to take care of these doubtful membership cases. The International Convention amended its Constitution to provide that the International Executive Board should have prior jurisdiction of these cases. A special Membership Committee was appointed by the International Executive Board and this committee has been functioning for four years. We have handled 11,075 cases, as indicated by this report, which shows the disposition of the cases as such as handled by the International Committee. I think this was a constructive step and that it provided the means whereby we could
725 clear up these cases involving membership, which has become very valuable in the United Mine Workers."

Mr. Rowntree: There is a similar report at page 136 of the 1956 convention.

(The reading of the deposition continued.)

"A. The witness would like to point out also that continuance of membership in the Union by a pensioner is not mandatory; and he need not, if he so elects, pay his dollar a month dues, as the constitution provides for pensioned members.

726 "Q. Now, Mr. Lewis, that was another one of the means that we contended was adopted to tie the Welfare Fund to the Union; that is, making pensioners retain their membership in the Union, which involves that constitutional amendment back in 1948. That business of requiring pensioners to retain their union membership con-

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tinued on through 1952 and 1956 conventions, did it not?

"A. I think it is in effect now.

"Q. Yes, sir. "A. In the constitution. But, again, I point out to you that the necessity of paying those dues does not impair his pension rights or his rights to any other benefits, hospitalization or what not.

"You will understand, of course, that all pensioners are entitled to free hospitalization privileges by the Fund. In fact, they constitute the largest block of expense, the largest portion of the expense. And special consideration was given to pensioners; because the convention had under consideration the increasing of the dues to all members, and this exception was made for the pensioners as a contribution to the pensioners who do not have to pay the regular monthly dues.

"The monthly dues to a working member is four dollars a month, and the pensioners' dues are only one dollar a month. The net profit to the pensioner is, in many
727 instances, greater than his income would be if he were a working miner. So that is the reason for the dollar dues.

"Q. It is true that the pensioner is required to pay the dollar and a quarter dues to the Union? "A. No. No, it is not true that he is required to pay. He is not 'required to pay.'

"If he wants to retain membership in the union it merely illustrates how much he will pay under that circumstance: namely, one dollar a month. A provision by the local unions on account of the extra payment to secretaries for clerical work and paper work, to enable the local union to be able to meet those expenditures. All for the benefit of these elderly pensioners, non-working pensioners.

"Q. Well, we have referred to pages 486 and 487 of the 1952 convention concerning a resolution moved for by a local union and a substitute resolution was presented by the committee on constitution set forth at the top of page 487:

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“Retired members, who are not employed outside of the coal mining industry, disabled members receiving aid, and those receiving State Workmen's Compensation payments, students attending school, also members temporarily unemployed through no fault of their own, shall pay
728 \$1.25 per month, dues to be forwarded by the local union to the district secretary-treasurer.’

“Now Mr. Kennedy made a comment at page 487 and page 488 which we have previously referred to, and Mr. Kennedy there states:

“In the first place, when the dollar dues for unemployed members and for those receiving pensions in particular was under consideration by this convention, it was pointed out that one of the reasons back of this was a very important legal reason. In other words, whether or not without any such consideration whatever, we could give membership to an individual without some consideration or to maintain the membership of an individual participating in pensions without consideration; and what I mean by ‘without consideration’ is that in the making of any contract between any parties whatsoever there must be some consideration to make that contract legal. That was the principal reason why this convention, in order to legalize beyond any question of doubt the membership of these individuals set this as a consideration.’

“A. Those are legal references. Mr. Kennedy is not a lawyer.

729 “Q. Is he not referring to a previous statement by you in the 1948 convention? “A. He may or may not have been. I do not know.

“Q. I think we have already mentioned that before; the statement you made in 1948 on this question of dues of retired members, where you stated that the Taft-Hartley Act required— “A. There was some legal discussion of points involved among the attorneys, and it was anticipated that if too many of the pensioners voided their membership in

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the United Mine Workers that the operators, in all likelihood, would raise the question that they were not obligated to raise funds or pay a royalty for non-members of the United Mine Workers of America, on the ground that the United Mine Workers had no right, no legal right, to represent non-members.

"It does not in any respect run to the question which you press: namely, to limit this Fund and its benefits only to members of the United Mine Workers and to make that a pre-requisite of an award.

"If I were making the statement Mr. Kennedy made, I might have phrased it in different words, but Mr. Kennedy phrased it in words which readily came to him.

"Q. Mr. Lewis, we refer to pages 488 and 489 of the same minutes where you made this statement:

730 "Based upon present computations governing the life expectancy of individual members, \$18,000 will be paid on the average under each pension award. Certainly we cannot continue to pay out that \$18,000 over a long period of years without fully protecting the legal membership of that individual and causing him to maintain his constitutional membership in this organization. The basis of his monthly dues was previously fixed by a convention as being the minimum that would qualify, as Vice President Kennedy says, as a proper consideration in the premises. "A. Those statements were predicated upon the conditions existing at that time and are not necessarily the law and the prophets in 1961.

"Q. But this was 1952 after the signing of the 1950 contract? "A. Exactly so. Exactly so.

"But that whole question has been clarified since that time, and it is definite that a pensioner does not need necessarily, to take his pension, to obtain membership in the United Mine Workers of America; and it is not true that only members of the United Mine Workers are eligible for awards.

"Q. Well, have you made corrective statements at any

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731 convention which would clear up this matter of membership? "A. I wouldn't know because I don't know what is in the convention records. I haven't read them as a matter of routine.

"Q. Well, these statements did make a profound impression on the membership, did they not? "A. I have no way of knowing.

"Q. I refer particularly to pages 490 and 491 of these same 1952 convention minutes. The statement of Delegate Morris:

" 'It wouldn't be healthy for our delegation not to get up and speak on this issue at this convention. When it came time for resolutions to be drawn to be sent to our International secretary-treasurer, the old men asked the Resolutions Committee to cut the dues. We told them and quoted from the proceedings of our last constitutional convention to the effect that our great leader, John L. Lewis, settled a big argument that it was only due to the penitive measures of the Taft-Hartley Act that we had to charge something and the dollar was the least we could charge.'

732 "Do you know if any corrective statements have been made at any later convention to clear up that impression?"

Mr. Rowntree: The question was asked—

Mr. Robertson: There was an objection there.

(The reading of the deposition was continued.)

"Q. May I ask what type of 'misunderstanding'? "A. The misunderstanding of Delegate Morris, that you lay great store by, apparently.

"Q. Well, has any effort been made to clarify that misunderstanding? "A. The convention clarified it.

"Q. Which convention now? "A. The convention that took all the action pertaining to this subject, the results of which confronted Delegate Morris and everybody else. Cer-

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tainly in our conventions our dissenting opinions and analysis had variance with various speakers.

"Q. To return to the 1956 convention, the minutes at pages 499 and 500, where the increase in these dues of retired members from one dollar to \$1.25 is again put in the form of a resolution, and presented by the Committee on Resolutions —"

Mr. Rowntree: Continuing over to page 159.

733 (The reading of the deposition was continued.)

"Q. The position was still maintained in the 1956 convention that there was a legal requirement that the men retain— "A. I suppose it is difficult for counsel to visualize the desire that is uppermost in the minds of many pensioners to retain membership in the United Mine Workers of America. And there are other reasons which have been analyzed. That question at that time was sufficiently obscure to justify the retention of membership in the union for the reasons that I have previously discussed.

"The dues to the organization were raised to four dollars per man per working member. There was a disinclination on the part of the majority of the delegates to require the pensioners, who were not employed in the industry, to pay that much dues to the organization. In one sense they regarded the action as a contribution of three dollars a month to a pensioner who, presumptively, had no other revenues besides his pension and Social Security. And the payment of three dollars was believed to be burdensome—of four dollars—was believed to be burdensome; so the convention took the action as recommended; which seems to me even now, after the elapse of the years, to have been a
734 justifiable, proper and virtuous action.

"And in the light of the occurrences since that action was taken, I affirm the soundness of the arrangement now as well as at that time.

"We have pensioners who do not pay dues to the organization. They elect not to. They may have removed to an

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area in the country and a residence with their children, where the localities that they have settled in—California, Florida, and other states, are far removed from the United Mine Workers, and some of them elect not to keep up their membership. Others elect to do so. The option is theirs.

“The organization assists them within the area of its own functions. That is all there is to the question as far as this witness is concerned.”

* * * * *

“Q. Isn't it true that all of these various things that we have talked about have resulted in such a tying up of the Welfare Fund to the union that the Welfare Fund is even thought of by union officers as being simply a Welfare

Department of the union? “A. That is not true in 735 any sense, according to the best judgment of this witness who has had long experience and intimate connection with the work of the Welfare Trust.

“Q. We refer to page 298 of the 1956 convention minutes; the statement of Mr. Kennedy speaking on the International officers' report, the United Mine Workers Welfare and Retirement Fund section of the report, speaking of the trustees.

“‘They are certainly in my judgment entitled to continuing commendation and approval for the great work done and being done by the Welfare Department of the United Mine Workers of America.’”

“The Witness: Well, I would consider the last sentence, where Mr. Kennedy refers to the ‘great work being done by the Welfare Department of the United Mine Workers of America’ as being merely a slip of the tongue; an inaccurate choice of words to which all public orators are given. One candidate for President called it ‘campaign oratory.’ I don't know what you would call it.

“But there is a confusion in the public mind—greatly aided by emanations from statements similar to your own in this conference—that the Welfare Fund is a department

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736 one and indivisible with the United Mine Workers of America.

"It is a natural assumption perhaps for some people little concerned with such matters, to assume that the United Mine Workers operate a Welfare Department.

"As a matter of fact, the Welfare Fund is not operated by the mine workers or by the coal operators, parties to the agreement. It is an independent agency, complete within itself, with which the United Mine Workers of America is cooperating because its members are the beneficiaries of the work of the Welfare Fund.

"As I have pointed out before, an increasing number of far-seeing coal operators in the country are publicly recognizing that fact, and the cooperation now received from the industry by men who fought its inception in the first instance and continued their animosity through the years—because they didn't like to admit error in judgment.

"So this statement by Mr. Kennedy, and this one title which he uses here, should be construed merely as a slip of the tongue in naming the agency.

737 "There are a good many agencies in the coal industry in the economic structure of the country, and it is rather difficult for one individual to retain the titles and identities of the organizations with accuracy or definiteness. I have a hard time remembering some of the agencies in the coal industry.

"Like in identifying Mr. Moody sometime back, I had to stop and think what that ponderous title of his organization might be.

"By Mr. Rowntree:

"Q. Mr. Kennedy was in a position where he should not be confused on those things, was he not? "A. Mr. Kennedy is like all the rest of us. He is mortal.

"Q. Is he not presently the president of the United Mine Workers? "A. Yes. But he is a human being and he is mortal, and he is not always perfect in his illusions when it comes to proper names or titles.

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"I think, like myself, he would probably stumble over a good many governmental agencies with which we have had to deal in the past two or three decades. I am quite sure that I stumble when I undertake to interpret the proper titles of these alphabetical agencies. And that is the case here, which I think has no importance, no bearing, no effect, and no influence on the subject at hand.

738 Mr. Rowntree: Page 165, Interrogatory No. 33 addressed to the Trustees:

(The reading of the deposition was continued.)

"Are the Trustees of the United Mine Workers of America Retirement and Welfare Fund advised that there is a broadly held view in the bituminous coal industry, shared by both operators and miners, to the effect that only members of the United Mine Workers of America may participate in the benefits of the Fund?"

"Answer: 'No.'

"Do you agree with that answer, Mr. Lewis? "A. I do not understand your first reading of that. Would you let me read that?"

"(After examining Interrogatory 33)

"The interrogatory in question is upon an assumption of knowledge of what are the views of the multitude of operators in the coal industry.

"Q. Also miners. "A. And the multitude of private citizens of the United States.

"Are the Trustees of the United Mine Workers of America Retirement and Welfare Fund"—now there is a slip—reverting to Mr. Kennedy for a moment. Pardon me.

739 You incorrectly, in the interrogatory, expressed the title of this Fund. The title of the Fund is 'The United Mine Workers Welfare and Retirement'.

"Q. And we called it 'Retirement and Welfare'? "A. Yes. Which is incorrect and makes my point.

"Are the Trustees of the United Mine Workers of America Retirement and Welfare Fund advised that there

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is a broadly held view in the bituminous industry',—

"It is a question of fact as to whether they really know that or whether they just assume it.

"—shared by both operators and miners, to the effect that only members of the United Mine Workers of America may participate in the benefits of that Fund?"

"Well, in the general atmosphere surrounding public knowledge of this Fund, who among the lay citizens can stop and interpret the exact relationship between the Fund and the mining industry?"

"Obviously they know that the United Mine Workers of America, as such, were the protagonists of the Fund, that they are the ones who made the fight to press this plan upon the coal industry. That the Government of the United States agreed to it, as the employer of personnel in coal mines in this country.

740 "And the proper answer is as defined here: 'No.' To which I fully agree.

"Q. And, pursuant to that answer, I take it that the Trustees have done nothing to combat any such impression that might exist among the miners in the industry?"

"A. Counsel, this witness does not agree with your premise. The interrogatory is based on a false concept and premise by you, when you are speaking of some other organization besides the United Mine Workers of America Welfare and Retirement Fund by your own typewritten wordage here. And if counsel can err in articulating these titles, then surely counsel would not deny to Mr. Kennedy the same privilege as a citizen in a casual, extemporaneous statement.

"Q. I certainly do not pretend to be immune from error.

"We have been talking about what happens with respect to the Union Shop clause and Welfare Fund provisions of the contract, particularly after 1950.

741 "I want to turn now to the disposition of another issue that existed in the 1950 negotiations; that is,

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this stabilization of the industry question, relating to the fact that there was too much coal for the market.

"The operators did object to the setting of a three-day work week and various other working limitations during the period of the 1949-1950 negotiations? The operator representatives were objecting? "A. I failed to catch the point of the question.

"Q. In the 1949 and 1950 negotiations, there existed the setting of three-day work-weeks and other limitings of the number of working days by the union. "A. Yes. The three-day work-week was promulgated.

"Q. And the operators objected to that? "A. Yes, they objected.

"Let me amplify that a little:

"We were asked by the government representatives and by the operators to have the mines resume work while we continued negotiating, in order to alleviate what they said was the hazard that the public was enduring of running out of coal and to insure against it.

"Now the operators made a great point that the public was in danger. Through their public relations organizations they widely circulated that point of view and it received wide publicity in the nation.

742 "We consented to go back to work without a contract, while we negotiated; but, as the consenting party, we stipulated that it would be a three days a week operation, which would remove all vestiges of apprehension for coal throughout the country and take the headlines off the newspapers and abate the widespread publicity on the question of a theoretical shortage of coal.

"They then objected to the three-day week on the ground that it didn't let them work five days a week if they could work five days a week.

"The intent of the mine workers was to widen the opportunity for equal employment opportunity in the industry of all men who had been engaged in the strike and were

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members of the union and to give them equal participation in the work available.

"We were well advised, of course, through our knowledge of the industry, that the industry could not expect to work more than an average of three days a week.

"So that is the Alpha and Omega of that question."

743. (The reading of the deposition was continued.)

"Did Mr. Moody ever talk to you about your proposal with respect to a limited work week, the control plan to stabilize the industry? "A. I do not recall that he ever talked to me personally on the question, but he made the welkin ring in the newspapers.

"Q. Did he ever talk to you and express the idea that he could not go along with a stabilization plan based upon a controlled number of days work because of the anti-trust laws? "A. I do not recall any personal conversation with Mr. Moody on that subject, but certainly I knew from the public press that he held those views when his organization met and he made this address—these remarks. And I considered it of little moment—his utterance.

"Q. Did the operators object to the limited work week because of economic reasons? Or what was the basis? "A. No. Their first concern—the position that they had occupied all through the negotiations was that they were mindful of the public weal and the public welfare.

"Their reaction when the three-day work-week was promulgated, was that we were interfering with their right to make profits as investors under our free enterprise system.

744 "They changed their position completely. In other words, they were smoked out of their hole.

"Q. They were really hurt in their pocketbook? "A. Their purse. We thought, 'Who steals my purse steals trash.'

"Q. Now the 1950 contract, as signed, contained no provision with respect to a limited work-week? "A. As I have

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previously testified that came about on a request to put the mines back in operation to abate a theoretical hazard, a shortage of coal for the industry and for household use in the nation. That is the only time that came up prior to the promulgation of the three days arrangement.

"But we were asked to do the country a favor—which was likewise a favor to the operators—by working without an agreement. So we named that as one of the considerations under which we would work. And the wails and lamentations were of course then heard from every high hill because it touched on a vital spot: Their left hip pocket.

"Q. Now, we refer to page 125 of the Convention Minutes of 1952, a statement of Mr. George Love, where Mr. Love states:"

Mr. Kram: Of course, your Honor, we continue our objection to the statement of an alleged conspirator, 745 and I guess it isn't necessary to repeat my grounds.

The Court: Same ruling.

(The reading of the deposition was continued.)

" 'This two and one-half year contract gives the industry its first real opportunity for stability in the last decade.'

"A. Where are you starting out reading?

"Q. Well, this is the second sentence again. I was trying to save space. "A. The second sentence of which paragraph?

"Q. The statement of George H. Love. "A. Yes, but there are two and a half paragraphs.

"Q. Well, the first paragraph. "A. Starting in the middle of the first paragraph?

"Q. The second sentence: 'This two and one-half years contract gives the industry its first real opportunity for stability in the last decade. Both the unions and the operators made concessions. The operators definitely established the right to control their production and their mining facilities.'

"There Mr. Love states that the contract attained the stability in the industry and yet says that the operators retained the right to govern the working time of the men.

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So my question is: How did this contract attain
746 stability in the industry? "A. By the elimination
of the hippodromes that were held from time to time
by the industry in the attempt to negotiate a new wage
scale.

"They were, in effect, Roman mobs; and all the spot-
lights of modern means of communication were turned on
them and all the mechanisms of our modern communication
systems were utilized by the press and the radio and tele-
vision to sensationalize their reports on the progress of
the negotiations in this large and important industry.

"Stabilization—the word used here by Mr. Love—the
word 'stabilization', and as used by me on numerous public
occasions, ran to the question of stabilization of production
facilities and the elimination, if possible, of the long cessa-
tions of production; the three ring circuses of the wage
conferences, with contending operators in the various sub-
divisions of their operators' organizations pulling this way
and that, and being interviewed, a la Mr. Moody and Mr.
Love.

"Mr. Moody's ill-conceived utterances, as repeated by
you, on a number of occasions were his desire to outdo Mr.
George Love who was president of another association of
operators as the greatest spokesman for the mining in-
dustry. But he had the overwhelming disadvantage of not
being familiar with the industry and of having had
747 little experience in it; because from York, Pennsyl-
vania, in that manufacturing concern that he repre-
sented before he came down as president of the association,
there was no coal industry for him to study. So he wanted
to be known as an expert with the rank of George Love,
naturally, for political reasons in the association to give
him more strength, because he had some critics in the
Southern Coal Association.

"So Mr. Love refers to 'stability'. He hopes that there
will be improved methods, as I translate his utterance to
myself—improved methods, of negotiating on a more intel-

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ligent basis, with less cumbersome machinery, with less stoppage of production. And I used the word 'stability' all my life in the industry with references to our obligations in that stabilization.

"There have been many changes in the negotiations in the industry. The last changes, since 1950, have occurred without the convening of large conferences; without public apprehension of a shutdown. Because they have been privately carried on between authorized representatives of the industry and the union, without fanfare and without publicity. And they have been successful so far, which does not imply that they will be successful tomorrow nor at the termination of the present agreement, which can be terminated upon sixty days notice by either party to the contract, the basic contract."

749 "Q. Mr. Lewis, hasn't this word 'stabilization' been heretofore related to the problem of excessive coal for the market? "A. At last the cat is out of the bag. By that question. The answer is no, because the United Mine Workers have nothing to do with the operation of the mines; the direction of working forces; nor the marketing of the coal after it leaves the pithead.

"They have never sought to influence or to guide the question of price; the question of preparation; the quality of preparation—to refine the coal to a low sulphur or a high BTU qualification. And in our use of the word 'stability' and Mr. Love's, insofar as it relates to any of our joint interests, the word 'stability' refers to that area which concerns the United Mine Workers of America and the coal operators.

750 "As a matter of fact, in the basic agreement of the organization which has been therefor forty years or maybe fifty, there is a clause which reads as follows, substantially:

"The management of the mines and the direction of

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the working force, are vested in the coal operators and the United Mine Workers of America will not abridge this right.'

That has been the bible on that subject.

"We do not desire to assume the responsibility of management. We don't feel we are qualified, and we think the results would be adverse to the interests of the members of the United Mine Workers of America.

"The coal, when it leaves the mines, free on board the coal cars or the barges on which it is loaded, or the trucks, finishes the responsibility of the United Mine Workers.

"Q. Now, Mr. Lewis, refer again to this statement on page 297 of the 1948 Convention Minutes:

"So next year in 1949 or at any other time when evil days come upon this industry, you will find the United Mine Workers of America moving in, and if there are only three days work in this industry we will all have the three days work. These things are of the utmost importance.'

751 "And also the statement previously referred to on pages 66 and 67 of the 1952 Convention Minutes:

"There comes up at this conference, we think, the question of some regulation of the working time, some stabilization in the industry. The mine workers have gazed at some degree with admitted apprehension at the tendency in the industry to reduce their prices in the face of increased competition. Frankly, we think the industry has been too hasty.

"A. That is an opinion on the matter of public policy which the operators were utilizing to plead pauperism as a reason why they could not concede any new advantages to the mine workers in the new agreements.

"And the first statement you read, from the 1948 Convention: My statement to the Convention that when needs must we would act to stabilize the industry related entirely to the shortening of the work week, and the fact that we would not idly sit by and see whole areas—north, south, east, or west—pauperized by the fact that their working time had been destroyed by the policy of the operators.

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"In other words, it was the genesis of the three-day week, or four-day week, or five-day week. The industry now is limited to a five-day week on production, by joint agreement.

Or emergency work can be done by the payment of
752 overtime on Saturday and Sunday if needs must, if it is an emergency. But coal can be produced only five days a week under the contracts of the Union with the industry.

"Q. It is a problem arising from an excessive amount of coal for the market? "A. It is a problem of how much the market requires in relation to the production capacity of the industry.

"It is widely advocated. It has been talked of in a number of industries now. Increasingly it will be discussed if this economic situation does not improve.

"Q. Now this 'stabilization' that Mr. Love speaks of there, was it not discussed between you and the operators that the problem of an excessive amount of coal for the market would be solved by forcing the smaller and weaker companies and their employees out of the industry, leaving the market to the big companies or producers who were represented by Mr. Love and the other representatives at these negotiations? "A. No. No, that was never discussed.

"Q. Was it not discussed that the National Bituminous Coal Wage Agreement would be used to accomplish the driving out of the smaller companies from the industry?

"A. No.

"Q. Now, Mr. Lewis, I believe that you have already commented upon the difference in the kind of collective
753 bargaining you had in the industry after 1950 as compared to the preceding period.

"Would you compare the type of bargaining as to the smoothness of the bargaining as compared to the previous period that you experienced in the past 1950 period? "A. In 1950 the contract had been made between the parties for a duration period that was indefinite, governed by a clause—

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the expiration date was governed by a clause in the contract mutually agreed to, providing for the termination by either party to the agreement on a formal sixty day notice.

"The 1950 agreement continued for a period and representatives of the United Mine Workers inquired privately from representatives of the operators whether they would like the Mine Workers to give sixty day notice; or would prefer, privately talked about, the extension of the agreement and under what terms.

"The operators communicated with each other on that question in their own meetings and in their own manner, and replied that they would be glad to sit down with informal representatives on both sides and try to work out a revised form of the agreement which could be adopted and remain in force, without the necessity of a sixty day notice being filed; it being understood that both parties reserved the right to utilize the sixty day notice and terminate
754 the agreement in the event that these more or less non-public discussions turned out to be futile. That is all there is to it.

"That has been done in succession several times since 1950. The agreement has been improved for the mine workers. The public has not been disturbed by the threat of a strike in sixty days; because the mere filing of a notice by either party to the agreement would create public concern or synthetic public concern created by those who might be interested in so doing.

"It has been found mutually advantageous. There is no agreement to continue following this procedure. It is subject to change by mutual agreement at any time, or without mutual agreement.

"To me it seems to be constructive. It rendered unnecessary the creation of formal negotiating committees representative of all producing districts in the United States and the consequent confusion that inevitably follows those things. The newspaper notoriety. Whatever effect it may

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have upon the storage policy of utility and other power consumers of coal who, fearful that a possible strike might continue for some duration—long period of duration; in consequence rush into the market and buy excess quantities of coal for storage purposes; and the reaction from that would come later in lack of working time for the industry.

755 "That, in substance, about expresses the arrangement."

Mr. Rowntree: With respect to the bargaining after 1950, we make reference to 1956, page 97 and 98.

Mr. Kramer: Are you talking about the '56 minutes?

Mr. Rowntree: Yes. Quoting at the bottom of the page:

"Following this chaotic period of labor-management relations in the industry, the Bituminous Coal Operators' Association was formed on July 22, 1950, for the purpose of promoting 'Stable, just and harmonious industrial relations' on a national basis.

"This Association, representing for collective bargaining purposes approximately half of this tonnage of bituminous coal mined, is comprised of the following regional associations:

"Central Pennsylvania Coal Producers' Association

"Illinois Coal Operators Association

"Indiana Coal Producers Association

"Northern Panhandle of West Virginia Coal Operators' Association—

"Northern West Virginia Coal Association

756 "Ohio Coal Association

"Virginia Coal Operators' Association

"Western Pennsylvania Coal Operators' Association

"In addition the membership includes a number of individual companies. Among these are some of the largest commercial coal companies and major steel companies which operate coal mines."

The 1952 minutes, page 156—

Mr. Combs: May I point out to your Honor what counsel

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has just read? It is part of the message of the President of the United States to the Congress of the United States, reporting on the wage negotiations, and he read from one paragraph—two paragraphs of a long statement made to the Congress.

757 The Court: Yes, sir.

Mr. Kramer: Now you are reading from what?

Mr. Rowntree: The 1952 minutes, page 150.

Mr. Rowntree: "Washington Conference of 1951.

"One of the outstanding accomplishments of our distinguished President, John L. Lewis, was his successful negotiation of the 1951-52 Agreement without publicity or fanfare, which became effective February 1, 1951, five months before the expiration of the then existing Agreement.

"Mr. Lewis had many conferences with Mr. Harry M. Moses, who represented the industry. Finally, in Mr. Lewis' handwriting, the suggestions below were given to Mr. Moses, who made a copy of them and handed the copy to Mr. Lewis, retaining those in Mr. Lewis' handwriting. These suggestions resulted in the consummation of the National Bituminous Coal Wage Agreement of 1950, as amended January 18, 1951 —"

That is all I care to read there. Do you want to read the rest of it?

Mr. Combs: No, I just want to point out though for the benefit of the Court and the jury that this was taken from the officers' report, a very lengthy report, to the convention that was held at that time in Cincinnati, Ohio, and I might also point out for the information of the Court and the jury that these convention proceedings were public and the newspaper representatives attended all sessions of these meetings.

Mr. Rowntree: All right.

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During the course of the 1952 convention, at page 525, under "Supplemental Scale Committee Report."

"Inasmuch as certain contractual developments occurred after the Officers' report had been printed, we respectfully submit herewith a supplemental report covering recent wage negotiations to bring the delegates up to date:"

Skipping a paragraph.

759 "A National Bituminous Coal Wage Agreement was successfully consummated. This contract contains the following provisions:"

Mr. Rowntree: Page 533, under the statement of Vice-President Kennedy.

"I might say that in the negotiation of the recent Bituminous Wage Agreement, in fact in the last two Bituminous Wage Agreements, the negotiators representing the respective parties were made up of one man from the Bituminous Coal Operators' Association in the person of Harry Moses; and the other negotiator was President Lewis, of this organization."

760 Mr. Rowntree: The 1956 convention, page 123, there is set forth—

Mr. Rowntree: There is set forth there a call of the National Policy Committee of the Union sent out by the president, John L. Lewis, dated August 17, 1955, and on the same date a telegram to the members of the International Executive Board from the president of the union calling a meeting, and then there follows a circular letter of August 26, 1955, to the officers and members of the United Mine Workers from the International Officers stating:

"We have negotiated a new contract denominated 'National Bituminous Coal Wage Agreement of 1950 as Amended Effective September 1, 1955.'"

And on page 302 of the same minutes of 1956, there is a

statement by Vice-President Thomas Kennedy—I guess I better read it, Your Honor.

761 “In my talk,” starting with the second paragraph.

“In my talk to the Convention yesterday, in analyzing the report of the officers, I referred to the new techniques that have been engaged in for the past few years with respect to the negotiation and the consummation of new agreements. Harry Moses, as President of the Bituminous Coal Operators’ Association, and your President engaged in these conferences and negotiations in the making of the last several agreements—a two-man negotiating team—and as I indicated yesterday we profited immeasurably as a result of this technique in negotiation and in the consummation of agreements.

“Unfortunately, not too long ago Harry Moses passed to the Great Beyond. Harry Moses was a fine character. He was born in the mining districts. His people came from the mining districts. He worked in the mines himself, and in his heart he had the philosophy and the dreams of the mine workers of this country. Therefore, in the making of agreements he and President Lewis predicated their discussions on what would be good for the men in the industry and what would be good for the industry itself, as well as for our country.

762 “As I said, Harry Moses passed on to his reward, and a new man was eventually elected to succeed Harry Moses in that very important position.

“That man happened to be a Mr. Edward J. Fox, the President of the Philadelphia and Reading Coal and Iron Company in the Anthracite Region. He is a good mining man. We have dealt with him in the Anthracite over the years. He is honest and forthright in all of his work and in all of his undertakings, Mr. Fox assumed his position on September 1. Previous to his assumption of office the Steel Workers negotiated a new agreement for a period of three years, with certain increases broken down and applied partially in each of the tree. There were some questions as to

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the actual amount of the increase secured in that contract. It probably runs about 29 cents an hour over the three-year period, or thereabouts. But, regardless of the amount, in our judgment the Steel Workers did a good job in pulling a contract out of the fire, as a result of their strike.

"There is a very close identity of interest between the United Mine Workers of America and the Steel Workers, because in reality they constitute more or less a joint industry because of the captive mines operated by the steel companies, the employees of which are members of
763 the United Mine Workers of America, and we congratulate the Steel Workers for the successful ending of their negotiations in the making of this new agreement.

"Well, it would naturally follow that the people at the head of the steel companies who also control the captive mine industry, when they fixed the money that could be applied to the captive mine industry in the making of our new agreement. Consequently, in the early part of August we sounded out, through Mr. Fox, whether or not the coal operators, represented by his organization, were willing to follow the same course and the same pattern in the making of a contract as was followed by Harry Moses and his Executive Committee. We got word back that they did want to follow that course; that sixty days' notice was not necessary for the reopening of the contract which expired September 1. Therefore, negotiations were engaged in similar to the negotiations we have had in the past.

"A number of meetings were held and finally matters reached a point about a week ago last Monday where we thought that there should be an enlarged conference, such as they have had previously under Mr. Moses, when the final word would be spoken by the respective parties. That
764 conference was held in Washington a week ago last Friday. Both sides laid down their bases of suggested agreement and understanding.

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"The operators recessed and Mr. Fox returned and accepted the proposals as made to the Joint Conference the previous Friday."

765 Mr. Rowntree: We offer United Mine Workers Journal of April 1—I don't think we need to go into that. I think the last statement covered the point.

(The reading of the deposition was continued.)

"Q. Mr. Fox was a man who carried on these informal negotiations after Mr. Moses died? "A. He is the president of the Bituminous Coal Operators Association with offices in Washington; and in the capacity we understand the coal operators expect him to dispose of all the routine business incident to the operation of the joint agreement with the United Mine Workers of America and all other parties who are affected.

"So naturally the negotiations began with Mr. Fox."

Mr. Rowntree: To page 185.

(The reading of the deposition was continued.)

"Q. Mr. Lewis, the successive amendments to the National Bituminous Coal Wage Agreement from 1950 on increased the wage each time, did they not? "A. I think so. That was the intent of the effort."

Mr. Rowntree: We refer to page 30 of the 1952 Minutes under the heading "Bituminous Wage Scale Conferences and Agreements—1949-1952", concerning the 1950 contract, starting in the middle of the bottom paragraph:—

766 this is addressed to the membership at the convention, I suppose.

"Thanks to your cooperation, your committee was successful in negotiating a 70-cents-per-day increase in wages, 10 cents per ton in royalty for the Welfare and Retirement Fund . . ."

That is the '52 contract.

We have as the next exhibit the United Mine Workers Journal of December 15, 1950, page 3.

(Exhibit No. 37 was marked for identification and filed.)

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Mr. Royntree: I will just read the summary on the left-hand bottom of that page.

Following is a contract-by-contract listing of major gains made by UMWA negotiators since 1950, the year the Bituminous Coal Operators' Association was formed:

"1951—Signed January 26, this agreement raised wages \$1.60 a day to \$16.35. It also added the stabilizing feature of the 'open-end' termination arrangement which meant that the contract was firm for a year, could then be terminated only by 60-days' notice from either party.

"1952—Effective October 1, the 1952 agreement raised basic daily wages \$1.90 a day to \$18.25, increased 767 operator payments to the UMWA Welfare and Retirement Fund from 30 cents a ton to the present level of 40 cents a ton.

"1955—Effective September 1, the 1955 agreement boosted wages in two steps \$2 a day to \$20.25 a day. Vacation period was lengthened to 12 days and payment therefore raised from \$100 to \$140. Punitive pay for Saturday and Sunday work as such was added.

"1956—Signed October 4, the 1956 agreement provided for a second two-step, \$2-a-day wage boost, which brought basic wages to \$22.25 a day. Vacation pay was hiked \$40 to \$180 a year, and, for the year 1956 only, a Christmas vacation of three days with a payment of \$40 for that time off was provided.

"1958—Effective December 1, the contract calls for a third two-step \$2-a-day wage increase bringing basic wages as of April 1, 1959, to \$24.25 daily. Vacation pay was raised \$20 to a total of \$200 for a 14-day period. The Protective Wage Clause, designed to prevent handling of non-Union coal by commercial operators, was added to the agreement."

Skip to the last question on page 186.

(The reading of the deposition was continued.)

768 "Q. Mr. Lewis, as the principal representative of the union in dealing with these coal companies you were familiar with each of these large coal companies

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and knew them rather thoroughly as far as their financial side and their production side was concerned; is that right?

"A. In a general way, I have testified that we have a substantial knowledge of the form, structure, reserves, markets, and financial position of each of the important coal companies in the country, acquired during our tenure of office.

"Q. Is it not true that these increases—these successive increases in the wage rate—was designed to meet the increased ability of these large coal companies to pay these successive wage increases? "A. The mine workers had no relation to those elements of consideration. The mine worker was merely interested in getting a compensatory rate for his services in an ultrahazardous industry, affected with much unemployment; and that was the sole consideration of the United Mine Workers.

"We did not intend to have the operators do anything except what they judged themselves was essential to do in the operation of their mines or in the marketing of their coal.

"Q. Now we refer to page 128 of the 1956 Minutes.

769 "Q. I am addressing this question particularly to that paragraph in the middle of the page, Mr. Lewis, where you make a statement following Mr. Moses' statement after the signing of the 1955 contract, and particularly that language where you say, with reference to the contract:

"It is based upon the economics of a modernized industry. It is tailored to fit the future requirements of constantly progressive industrial techniques. It is in line with the established policy of the mine workers to share with the public and investors in a constantly increasing man-day productivity. Man-day productivity has increased approximately forty per cent since 1950."

"Now, Mr. Lewis, are you saying in effect there that the contract was tailored to fit the ability of the mechanized companies to pay more wages because of their increased productivity per man per day by reason of their modern-

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ization of their plants? "A. No. I would like to read into the record—

"Q. All right, sir. "A. —the complete paragraph.

"Q. Yes, sir. "A. This witness speaking:—I think
770 this was made at a public press conference.

"Q. It looks like a press conference. "A. When the agreement was signed.

"Q. That's right. "A. And the press and radio came in and Mr. Moses and I made separate statements in behalf of our respective interests.

"Mr. Lewis: Thank you; Mr. Moses. I have a brief statement, gentlemen.

"This agreement is sane and in the public interest. It preserves the era of pacific relations effective since 1956."

Mr. Rowntree: That should be 1950.

Mr. Combs: 1956 is what the stenographer had. I assume he refers to 1950.

Mr. Kramer: Let's correct it then. I suggest you start again, Mr. Robertson.

(The reading of the deposition continued.)

"This agreement is sane and in the public interest. It preserves the era of pacific relations effective since 1950. It will not oppress the coal consumers nor yet expose the brittle bones of the operators to the icy blasts of the coming winter.

"It is devoid of Marxian babble; contained no
771 wind or water.

"It is based upon the economics of a modernized industry. It is tailored to fit the future requirements of constantly progressive industrial techniques. It is in line with the established policy of the mine workers to share with the public and investors in a constantly increasing man-day productivity. Man-day productivity has increased approximately forty per cent since 1950."

"Production per man-day is 9.773 tons on a national average.

"This productivity is in amazing contrast with British

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and Continental productivity which is less than $1\frac{1}{4}$ tons per man per day.

"The agreement is a constructive instrument with edible virtues.

"Mine workers require strong meat and eating money will produce more coal than philosophic discourse.

"You all have copies, haven't you?"

End of paragraph.

"Q. Now, Mr. Lewis, turn to page 308 in the same 1956 book, page 308.

"At this point I believe you are speaking to the 1956 Convention.

"Commencing in the middle of the page there:

772 "This contract encompasses all that the industry is able to pay at this time. There isn't anymore. If there was we would get it. So there isn't anymore. It is all there wrapped up. If you look at it long enough you will find it is good. Your officers know something about this industry. We know the status, the financial standing, and the market possibilities, and the operating costs, and can project them far to the future of any major coal company in this country. So we are equipped with the facts when we talk with them."

"So, with respect to the major coal companies, Mr. Lewis, you were familiar with their ability to pay these progressive increases in wage? "A. We were dealing with the preponderance of tonnage in the industry and making a contract with the industry through the only established articulate leadership that they had until that time created; namely, the negotiating representatives of the operating end of the industry who sat in joint conference and who participated in the task of negotiating agreements; who sat for endless days in negotiating conferences over each and all of the questions at issue.

"The industry as a whole had increased its productivity—and those are national averages, the figures which I

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quote there. All in the public interest; all consistent
773 with the traditions and practices of our economy
since industrialized America has come into being;
and we were representing only the interests of the members
of the United Mine Workers of America, and were not
responsible or concerned in any official way—and certainly
not in any personal or private way—with what the oper-
ators of the industry, as such, would do as affecting those
questions over which the United Mine Workers of America
had no jurisdiction.

“To suggest that the wage increases negotiated during
the period since 1950 in any way were designed to favor
certain companies whom you wrap up under the subject of
‘large companies’ is absurd, completely wrong, and con-
stitutes an insult to the integrity of the members and officers
of the United Mine Workers of America.

“You are charging me, by implication and by inference,
with being particeps criminis to a conspiracy to aid special
interests in the coal industry; under conditions which, if
proven, would make this witness guilty of a crime, together
with his associates.

“Officially in behalf of the Union and personally, speaking
for this witness alone, I deeply resent the aspersions and the
implied suggestions that I would participate in an unlawful
conspiracy after a half century of service in various posi-
tions for the United Mine Workers of America.

774 “The charge, the insinuations, and the inferences,
are deeply resented by this witness.

“Q. Well, Mr. Lewis, I’m sorry you feel that way about
it, but I do want to go on with some other statements which
you made at the 1956 convention.

“On page 310, paragraph commencing at the top of the
page —”

By Mr. Rowntree:

“Q. ‘These great combines now being formed in the in-
dustry are able to save enormous sums of money in the

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production of coal, in the buying of supplies, on the part of managerial ability and administration in the reduction of the idle day time, because of their ability to make contracts with the great power consuming and manufacturing industries of the county, and deliver them on schedule, enabling them to plot their production with the maximum number of days of operation per year and cutting out the unnecessary idle day drag that mounts the cost of production.'

"Now isn't it true, Mr. Lewis, that these things, together with the mechanization of the mines, contributed to the saving of money in the operation of these large coal companies to a degree beyond the ability of the small coal producers such as exists in East Tennessee to match?

775 "A. Counsel, the statement you have just read, which I made, is in line with the accepted technique in the whole of the American economy.

"The United Mine Workers are not responsible for the entry into the industry of any American citizen who thinks he wants to become a miner, a producer of coal.

"He may well be equipped to come into the industry and assume that task or he may be inefficiently equipped.

"He may be without any knowledge of the industry. He may be without adequate funds. He may be without any knowledge of where he can market his tonnage which he intends to produce.

"He may have substantial credit in the banks and be capable of buying the best that the market will afford in manpower, in managerial ability, in equipment, in advertising, and all the marketing arrangements. Or he may be the reverse: Utterly without all of those things.

He may be a farmer with ten acres or forty acres of land underlain with some coal veins. He may decide to open a mine there with the brother-in-law's assistance and produce their own requirements of coal on his own land, under his own conditions.

"He may enlarge that and sell to his neighbors.

776 "He can scarcely be considered a formidable competitor in the open market with better equipped, better managed concerns, with ample credit for the production of coal.

"In the same manner that a chain store may erect a mammoth retail establishment across the street from a corner groceryman who has been on that corner selling groceries to his patrons for a half century; but the chain store, through all the reasons and elements that are contained in the matter of purveying groceries, ultimately will take much of his trade.

"The United Mine Workers of America are not responsible for anybody who fails to succeed in the business world or in the mining industry.

"An average of 400 to 500 concerns go into bankruptcy each week in the United States of America. Sometimes 300 or 350; sometimes 650; sometimes 425; but a fair average, in my estimation, would be 400 to 500.

"Who is responsible?

"To some degree, certain business enterprise coming into conflict with what might be called the genius of our modern society.

"We are living in a time, in a period, that is fascinating, because never before in any country in all history has the genius of mankind flowered as it has in our own
777 country in our own time.

"It runs to the question of why, for instance, we are sitting here today on the tenth floor of a modern hotel in Tampa, Florida, instead of patronizing a third rate hotel eleven blocks down the street somewhere from where this edifice sits.

"Why? Because we are able to pay. Because this hotel has been erected and it takes away trade from inferior hotels, by choice of the patron.

"That is the old theory, in effect—if you want to get down to the bread and butter elements in this thing—why people

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buy their commodities in the cheapest markets, and the enterprise that produces the cheapest commodity achieves an advantage in the cost of production by the volume of purchases.

"So it is with these pallid, underfed, ill-nourished operators of small coal mines who cannot keep up with the economic procession, nor live under the rules of competition as it now exists in this free enterprise nation.

"The United Mine Workers of America disclaims any responsibility for those units of the industry, those lesser producers whom you seem to believe should be kept alive at the expense of the body politic and the body social; and that the rule of industry should be that only the inferior producers of this country should be patronized, on an equal basis with the larger enterprises and more efficient
778 enterprises.

"It is the public policy of the United States, in buying the essential items necessary to properly operate and protect this government to which we all adhere, to enter the open market and buy from the modern enterprises that furnish them their goods at the lowest price on the market.

"There can be no conspiracy in the United Mine Workers of America, by the United Mine Workers of America, for bargaining with the coal industry in the only way that it is possible to bargain with the industry after seventy years of experience: namely, to deal with those representatives of the industry elected by the coal industry to so represent them in their dealings with the United Mine Workers of America."

Mr. Rowntree: We introduced at that time the United Mine Workers Journal for May 15, 1952, page six.

(The reading of the deposition was continued.)

By Mr. Rowntree:

"Q. I want to quote particularly the sentence starting five lines down:

" 'We've got many units of our industry that aren't modern, with low productivity—' "

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Mr. Rowntree: This is a statement by Mr. Lewis.
779 (The reading of the deposition was continued.)

“We’ve got many units of our industry that aren’t modern, with low productivity and obsolete machinery, not well financed, no marketing outlets, mining a poor grade of coal, and with inefficient management. They’re just a drag on the industry. The constant tendency in this country is going to be for the concentration of production into fewer units, with the best possible equipment, under the most modern plans that our engineers can devise with less idle-day loss; because the more continuous operation is geared to standard, qualified, marketing outlets and practices. That’s the tendency.”

“And continuing with the next sentence:

“More and more of the obsolete units will fall by the board and go out of production.”

“That, in substance, I take it, is what you have been saying in the answer you gave before? “A. This statement which you have just read is merely an analysis of what is practiced and constitutes a shibboleth of the American economy and its varied industrial units.

“Obviously the statement is factually true in each and every particular. That will be the trend. That has
780 been the trend in the years that have eventuated since 1952.

“The prediction in this statement as to the future is obviously well premised and has been justified by the records made on the scroll of time since that date.

“The United Mine Workers are not responsible for the individual units who fail to keep up with the competitive marking pace of American industry.

“These units are like the soldiers on the forced march. A certain percentage are compelled to fall out and rest by the wayside, while their more stalwart comrades carry on, burdened though they may be.

781 “I know of no other way in which the American economy can operate. I do not know anyone who generally known and generally understood and commonly

knows any other way that the American economy could operate and preserve the principles of free enterprise, investment for profits, reward for genius—call it 'capitalism' if you will.

"The difference between our American concept of freedom and liberty, free enterprise, reward for genius, individual participation in a trade, vocation, occupation, enterprise—freedom of employment, the right to organize, the right to pay taxes for the privilege—those concepts, those standards, those principles, are what are causing world-wide conflict in the years in which we now live, between those forms of government who adhere to the socialistic or Marxian concept of the operation of a state—who believe that the individual citizen is naught but the servant of the State—that he has no right to participate in the rewards of his own genius or his own labors and should be content with the substandard conditions that affect him as an individual; all because of his fealty or his presumed fealty to the oriental philosophy of Communism.

"This is America in which we live. The competitive theory is predicated upon the assumption that the strong shall be the vanguard of American enterprise, and
782 the weak, of necessity, now as in all periods of history, will naturally trail the strong until they fail and fall.

"The United Mine Workers of America and its negotiating representatives with the operators of the industry nationwide are not responsible for those things. They are parties in an association with all others.

The same is true in our profession; in all elements of our modern society.

In the American Bar Association. The average annual earnings of an attorney-at-law in the United States is amazingly low. Amazingly low. Because, where we have hundreds and perhaps thousands of attorneys who make fabulous incomes annually and are able to command those

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rewards by their genius or their skill, or their towering eminence in their profession; in contrast are the county seat lawyers in the backward counties of the United States, covering vast areas. The reward for genius expressed in the legal profession, as I ought to know. The same principle, sir.

"It is idle to inferentially accuse the United Mine Workers of being responsible for this condition in the legal profession or in the mining industry.

"I might go on with further analogies and take up other vocations and other industries and other professions. And an analysis would bring us to one and the same conclusion, because the same traits of human character exist among all men under our flag.

783 "Q. Mr. Lewis, do you think that the inevitable outcome of this American industrial complex is that fewer and fewer units of production will come about and that the smaller businessmen and their employees will inevitably be gobbled up by these large combines, as you call them? "A. I do not adapt your language."

Mr. Robertson: Adopt, I guess.

(The reading of the deposition was continued.)

"I simply say that to any student of American industry there is an evident strong tide running in favor of increased productivity on the part of the individual employed that is emphasized, that is cultivated, that has flowered to a great degree in many of our modern industries.

"It is already here and will continue because the American people have adopted that policy and they find it productive and good. That it is raising their standard of living in the United States. It is increasing the annual income.

784 "In 1933 and 1934 the gross national product, so-called, of the United States, fell to about forty or forty-four billion dollars for all the people of the United States.

"The President but yesterday avers that at the present time it is more than five hundred billion dollars practically five hundred and five billion.

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"The mere increase in population is insufficient to justify that sort of an advance without the requisite fact, the prime reason, that the income of the people is advancing, that their purchasing power is increasing, that they live better, that they live longer, they enjoy more vacations. Old age and insecurity and evil days are guarded to a greater degree than ever before in the history of our country. All being matters of prime concern to the head and to the members of every household in the United States.

"There is no reason to think that is going to change soon. It can't change under the compulsion of this overwhelming sentiment of the American people, and the investors of America are looking constantly for greater and greater rewards for their investments.

"Q. Mr. Lewis, is there no place for the so-called small business getting started with low capital? Or does the businessman have to be a big combine with tremendous financial resources in order to get into the business world? "A. That question is one that cannot be solved or answered competently by this witness nor by anyone else that this witness knows.

"The future of every man, of every enterprise, rests with the man or the enterprise. Only he can determine what he will do under the circumstances that exist.

"I could make no prophecy on that."

* * * * *

"Q. Mr. Lewis, the contract, the National Bituminous Coal Wage Agreement, contained terms which were included in each and every contract executed by the Union with any and all coal operators throughout the country; is that not right? "A. That, sir, is the policy.

"Q. Do you not think that the statements we have read from show a concern by the union that these large combines have the ability to pay these increased wages? "A. Obviously they have the ability or they wouldn't pay it and they

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786 couldn't pay it. That is part of the distribution of wealth.

"Q. And do you not think that these statements reflect the attitude of the union that the union does not care whether these smaller units can pay these increased wages?

"The Witness: The question of whether or not the union cares—the union being a composite of hundreds of thousands of members—and the industry being one that notoriously is over-developed, with a production capacity far in excess of economic requirements—the union, like all other elements, is bound by the conditions that exist, and cannot guarantee and in fact cannot afford to undertake to become the sponsor and the protector of thousands of inefficient and ill-operated, uneconomic mining units.

"I point out again on the record that the number of units engaged in mining in the United States,—consisting of large companies, small companies, partnerships, and individuals and syndicates—has been progressively reduced over the last twenty-five years from a total number approxi-
787 mating twelve thousand or more to a total number now extant of eight thousand minns.

"I again observe that the United Mine Workers of America are not responsible for this failure or withdrawal of nearly five thousand units in the industry from the business of mining coal.

"The United Mine Workers of America are victims of that situation just as are the investors in these uneconomic mines.

"The technological advances made by the industry, which affects vitally the production of coal and the ability of the investor to stay in the business, has augmented unemployment in the mining industry and has driven from their jobs or made idle hundreds and hundreds of thousands of coal miners.

"I point out that in World War I nearly 750,000 bituminous coal miners produced five hundred million tons in the

peak year of production for war needs in World War I.

"I observe that in World War II, with 300,000 less men employed in the industry, the peak production year produced six hundred and twenty-five million tons.

"There is the story of the American mining industry.

"By Mr. Rowntree:

788 "Q. Could you bring that figure up to date, Mr.

Lewis, as to what number of units are producing what tonnage up to the present time? Or do you have those figures in mind right now? "A. The American mining industry made that contribution and that rate of progress has continued in the years since World War II ended.

"In fact, the tempo and the pace has increased; and with a manpower of something over two hundred thousand men in the coal industry at the present time, the industry is capable of producing in excess of five hundred million tons per annum now.

"In World War I the production per man per day averaged about three tons; so it put 750,000 men to supply the needs of our nation during wartime and the requirements of our allies in that struggle.

"The average production now in 1960 is twelve tons per man on a national weighted average; in contrast to the productivity per man per day in World War I of three tons.

"Those are the facts. That is the trend.

"Q. Mr. Lewis, this uniform contract throughout the United States, did the union conduct intensive drives to make that contract applicable to all mining units throughout the country? "A. I have testified before that one

789 of the objects of the United Mine Workers of America—designed to improve their lot, to increase their wages, shorten their hours, promote safety, abate occupational disease, the incidence and ravages of occupational disease—caused the founders of the union when the union was first founded—first conceived and first founded and first came into being—that was one of the objects to make this

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program successful: The organization of all miners in the union, based upon the slogan 'United we stand and divided we fall'.

"In other words, they recognized the unhappy lot of an individual employee in trying to bargain with a mammoth operation or a lesser corporation.

" 'In union there is strength.' That is the only way in which the operators could be induced to collectively bargain for those items of concern to the working miner.

"In addition, the union stands for the principle that equal service must be predicated on equal pay.

"So there has been no departure from the uniform contract on the part of the United Mine Workers except when needs must and forces beyond our control have deprived the union of any power or influence in the question.

790 "Every device — economic, social, political, and legal — has been used continuously, during all the years since this union was organized, not only to prevent the accomplishment of the objectives but to establish conditions whereby the union could not exist and where men who dared to join the union were inconvenienced and persecuted without stint and became victims to denial of their citizenship rights and social advantages, in contrast to their fellow citizens who enjoyed immunity from such oppression.

"Q. With respect to the organizing activities of the union we make reference at this point to page 267 and 279 of the 1952 convention minutes."

Mr. Rowntree: "Organizing Activities." The portion of the report of the International officers, from the minutes.

Mr. Rowntree: I'll read portions of this.

"In October, 1950, an International Organizing Committee was set up by the International Executive Board to promote an intensified and integrated organizing campaign in the non-union areas of the Bituminous coal industry."

Skip to the second paragraph.

791 "Under the direction of this committee, and your International Officers, considerable progress has been made in both the strip and underground fields of the east. Progress is also being made in the Anthracite bootleg operations.

"Some of the non-union operators have appealed to the courts for injunctive relief against the United Mine Workers of America. Although several of these injunctions have temporarily impeded our campaign in certain areas, they have not appreciably affected our drive, and we anticipate success despite these legal bulwarks."

The last paragraph.

"Your International Officers have considered the organizing campaign of foremost importance and will continue to extend every effort and attention required to assure all men employed in the bituminous coal industry the privilege of membership in the United Mine Workers of America."

Mr. Combs: May I point out to the Court and to the jury that the excerpts he was reading was from the report of the officers to the convention on the organizing activities between conventions, and I might point out also that the last paragraph that he read is under the caption of "Organizing Activities in Alaska."

792 * * * * *

793 Mr. Rowntree: The statement on page 279, the same Minutes, comment upon the report of Vice-president Kennedy.

"We have been conducting organizing campaigns in unorganized sections of our industry; especially in regard to strip pit operations and the operations of the smaller mines. We have had very little difficulty in organizing large units, but we have extreme difficulty in organizing strippings where the workers are taken from farms and small towns adjacent to the stripping operations. But we are making progress and we shall continue to do so until the banner of

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this organization flies over every mine and every strip pit in the United States and Canada."

Page 284 of the 1956 Minutes:

794 "Subsequent to the last International Convention, the Organizing Committee which was formed by the International Union in 1950, has continued to function concentrating its activities on the non-union areas of the bituminous anthracite industry.

"Notwithstanding the liberal use of the injunction by the courts against your union; the Organizing Committee and your International Officers were able to overcome such obstacles and have conducted a decisively successful campaign. In addition to organizing scores of small mines throughout the industry, this campaign has culminated in all of the major non-union operators signing the joint agreement.

"We are particularly pleased to report that in Kentucky, the West Kentucky Coal Company, the Nashville Coal Company, the Homestead Coal Company, the Colonial Coal Company and the DeKoven Coal Company have all been organized."

It speaks about in Oklahoma and Kansas. Down at the bottom of that page.

"With few exceptions, consisting primarily of very small operations, the coal industry today enjoys an unprecedented degree of organization. Although considerable progress has been made we will continue to concentrate our organizational campaign in the bituminous area of Penn-

795 sylvania as well as in the bootleg mines in the anthracite region of Pennsylvania, and in Northern West Virginia, Virginia and Tennessee.

"Your International Officers will not relax their activities but will continue exerting every effort to extend to all employees of the coal industry the opportunity to enjoy the benefits of membership in the United Mine Workers of America."

(The reading of the deposition was continued.)

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"Mr. Lewis, the union has been aided in its organizing drives by finances, the use of its own finances, and by the big coal operators also; is that not true? And I make particular reference now to page 545 of the 1956 which refers to the acquisition of the West Kentucky Coal Company by Mr. Cyrus Easton."

Page 545:

"When Mr. Eaton's interests bought the West Kentucky Coal Company, which was operating non-union for more than 50 years, his first official act was to have that corporation sign the industry agreement with the United Mine Workers of America."

Mr. Combs: May I point out, this statement read by counsel, is a statement made by President Lewis just before he introduced Secretary of Labor Mitchell to the convention at Cincinnati. It constituted part of the introduction of Mr. Eaton.

Mr. Rowntree: This was part of the introduction of Mr. Eaton who spoke at the convention.

Mr. Combs: Yes.

Mr. Rowntree: We file the Journal of May 15, 1959, page 21.

Mr. Kramer: This, your Honor, is an issue of this magazine, or this paper, this journal, of May 15, 1959. The alleged conspiracy ends December 31, 1958.

The Court: Well, that, what he is about to read now, since it comes after December 31, 1958, according to Mr. Kramer, has no bearing on the question of alleged damages in this case because that is beyond the alleged damage period. But if it has any bearing on the matters that are involved during the period that is involved in this lawsuit, then the jury may consider it for whatever it is worth, if anything.

Mr. Kramer: Well, in view of your Honor's statement, counsel admits it is in May, 1959, which is subsequent to the period?

Mr. Rowntree: Yes, sir. The company in question here

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was purchased in 1958. The conversion to the union
797 operation was right after that.

Mr. Kramer: But the article from which you read was published in May 1959.

Mr. Rowntree: That is right. That is the date of the publication.

(Exhibit No. 38 was marked for identification and filed.)

Mr. Rowntree: The article is headed, "Elk River Coal & Lumber Co. Signs Contract". At the bottom of the right-hand column.

"What had been the largest non-union coal mining operation in West Virginia has now been brought under the terms of the UMW bituminous coal wage agreement of 1958. The Elk River Coal & Lumber Co. at Widen, Clay County, W. Va., signed the agreement on April 7. The mine is under the jurisdiction of District 17.

"General Manager Harold L. Beattie of the company said, 'The last count we took showed that 246 out of the 278 men eligible had joined the UMW.' The UMW conducted a quiet campaign to sign up the workers at the company. The company was purchased last year by the Pittston Co., a holding concern with operating coal subsidiaries in various coal mining states. The company formerly was owned by J. G. Bradley who had resisted efforts of
798 the UMW to organize his employees for 50 years."

We make reference to the testimony with respect to the acquisition of the St. Ellen and Millstadt mines by Peabody Coal Company. That is a matter which will subsequently come up in the proof.

Mr. Kramer: Wait just a minute, please. Now. Pass to what you had in mind, please.

(The reading of the deposition was continued.)

"Q. Those matters have been of help to the union, the United Mine Workers, in furthering its organizational drives, have they not?"

Mr. Rowntree: By "those matters" I mean specifically the West Kentucky Coal Company matter, the Elk River

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Coal and Lumber Company matter, the St. Ellen and Millstadt mine situation. Those are matters which come up in this record and I asked whether these acquisitions were of great benefit in furthering the organizational drive of the United Mine Workers.

"The Witness: These incidents to which you allude were rather small incidents, advantageous to the degree that they were advantageous. Not alone on these companies but in all other companies in the industry it is always 799 — advantageous to the union to increase its membership, to augment its strength.

"With respect to Peabody Coal Company, the acquisition of those mines in question was merely incidental to the carrying out of the basic coal agreement, that when a company became a party signatory to the industry contract he was of necessity including all the mines owned by that company wherever situated.

"Peabody Coal Company had a contract with the United Mine Workers of America for all its mines. As it expanded the number of mines under its control, naturally there was an obligation on the part of the company not to oppose collective bargaining in those mines then operated by that company. Purely incidental.

"Q. Is it not true, Mr. Lewis, that the existence of the Welfare Fund has been of great aid in the organizing drives of the union? "A. Merely as one of the incidents related to the benefits of collective bargaining to the individual. It is just one of the advantages of belonging to the union in the United States coal industry.

"Q. I make reference to the letter of Mr. Hugh White, District President of UMW District Number 12, of July 1, 1957, to the employees of the Millstadt Mine, in 800 which he states:"

Mr. Kramer: We object to the statement by someone not claimed to be a conspirator, not a party to this litigation, and it is a pure hearsay statement—what I shall refer to as a hearsay statement as far as this lawsuit is

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concerned, by some far off individual not in anywise related to the conspiracy as alleged or related to the operators and talking about something else.

Mr. Rowntree: Talking about a District president of the United Mine Workers, your Honor.

Mr. Kramer: Yes, but what is—that is true.

The Court: Overruled.

Mr. Rowntree: Talking about his use of language in respect to the Welfare and Retirement Fund.

The Court: Go ahead.

Mr. Rowntree: A letter to the employees of the Millstadt Mine, in which he states:

“After becoming a member of the United Mine Workers of America and working under the National Bituminous Coal Wage Agreement of 1950, as amended October 1, 1956, they will be eligible to receive all benefits from our Welfare and Retirement Fund.”

“And he lists those benefits.

801 “Has it been the practice of the Union, in its organizing campaigns, to represent to the employees that if they become a Union member they may participate in the Welfare Fund benefits? “A. I doubt there is a miner in the United States who doesn't know, in his own right, that the members of the United Mine Workers are eligible to such benefits and they are covered by a collective bargaining agreement.

“It is also true that when men become members of the United Mine Workers they like to have the knowledge and they inquire what are the benefits that the United Mine Workers of America provide through the Welfare-Fund by reason of adherence to the agreement.

“Mr. White's letter obviously was incidental and merely furnishing information to those members, as was his right and as was his duty, to furnish members of the United Mine Workers with precise information on things of concern to them.

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"Q. Do you not think it was his duty to further point out—if, in accordance with your previous testimony, membership was not a requisite to those benefits—that they did not have to join the Union in order to obtain those benefits?

"A. That had no bearing upon the case in point.

"The case in point is that the United Mine Workers are qualified to represent them after they become members, not before.

"Q. I was addressing that question to the language in that letter:

"After becoming a member of the United Mine Workers of America." "A. Mr. White is a coal miner. His educational opportunities in Alabama as a youth were limited and circumscribed by the debased economic conditions in the mining industry of Alabama. There are certain inadequacies in his education.

"Like myself, for instance, he is not a university graduate. He is not skilled in the preparation of documents that will have a bearing upon the statute of the United States or the decrees of our several courts bearing on conditions and affairs in the mining industry. He wrote the best letter he could.

"He did not express himself in the language and with the words that I would probably have used in writing that letter, or that you would use in preparing a paper in behalf of a client.

"What Mr. White said in no way alters or impacts upon the policy of the United Mine Workers of America and in no way affects the privileges due to a member, because his privileges cannot be in any way taken from him by
803 Mr. White with a letter or by any other act.

"So Mr. White's letter and his choice of words is not necessarily binding upon the United Mine Workers of America—is not binding—strike 'necessarily'.

"It is merely an administrative act on his part, of no consequence; intending only to satisfy a question or questioners seeking information."

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Mr. Combs: May it please the Court, may I point out that the quote from the letter is only part of the contents of the letter and the letter was written in July of 1957 in connection with a local organizing drive in the State of Illinois.

Mr. Rowntree: If your Honor please, I would like to read from United Mine Workers Journal, February 15, 1956, page 10.

The Court: Members of the jury a letter or statement of a representative of a local union made without authority from the officials of the UMW would not be binding upon the UMW, unless it was later ratified by the officials of the UMW.

Mr. Rowntree: If your Honor please, this was a district president, district of the United Mine Workers, president of the district that wrote that letter, not a local president.

Mr. Kramer: The same rule, your Honor, we 804 insist is applicable.

The Court: Unless a local district president had authority from the officials of the international union, that is the UMW, or unless such statement was later ratified by the officials of the UMW, the Court holds that that wouldn't be binding upon the UMW to the extent certainly to show the conspiracy upon the part of the UMW.

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The Court: All right. The Court is referring to isolated statements allegedly made by these district organizers, but the jury will look to the whole picture and all the evidence to determine whether or not such statements were authorized by the officials of the UMW, whether or not they were ratified or acquiesced in or approved by the UMW:

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Mr. Rowntree: If it please the Court and ladies and gentlemen of the jury, I read from United Mine Workers Journal, February 15, 1956, page 10, article entitled 805 "District 28 Pensioners Rally at Wise, Va., Court-house."

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Mr. Kramer: May it please the Court, we are going to object to the introduction of this statement taken from the United Mine Workers Journal, unless there is a showing of some construction, authorization or connection between United Mine Workers of America or the trustees for what these pensioners did.

This is an article that they desire to introduce which makes a recital of what certain people drawing pensions from this fund of the trustees may have done. The fact that they did it as individuals or did it as a group, unless they were authorized to do it, instructed to do it, or their conduct was in some manner ratified, is not evidence of any act on the part of the party defendants in this cross action and we object to it for that reason.

The Court: What do you say, Mr. Rowntree?

Mr. Rowntree: Well, starting off, this first one, I think the connection is obvious in the second paragraph.

Mr. Kramer: No. Someone was present that made a speech. It doesn't say that he ratified or did anything about it, as I read that.

Mr. Rowntree: It is the president of the United
806 Mine Workers' District 30.

Mr. Rowntree: This is the pensioners.

The Court: Sir?

Mr. Rowntree: These are pensioners under the Welfare Fund.

The Court: Oh, I see. Overruled.

It is your position that they used these pensioners to picket and engage in other union activity and that was a part of the conspiracy?

Mr. Rowntree: That is correct.

807 The Court: Overruled.

Mr. Kramer: It is our position unless there is a showing that they did just what your Honor has now said that they—I suppose you are referring to the union—that

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the union used these, the fact that the people drew a pension and they voluntarily did this, that or something else—

The Court: Unless it is connected up with the union, gentlemen of the jury, you won't consider it for any purpose, but if the union either acquiesced in these activities, or sponsored the activities, or incited the activities, or ratified the activities, then you may look to it for whatever it may be worth, if anything, as bearing on the alleged conspiracy.

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808 Mr. Rowntree: "The Miners' Pension Committee of District 28 combined a regular meeting in their organizing campaign with a 'sneak preview' of the Wise, Va., Memorial Hospital to form a rally on February 5 that attracted a crowd of 3,000 persons. Five hundred crowded into the Wise Courthouse, while the remainder spilled into the street to listen over loudspeakers.

"Samuel Caddy, president of UMWA District 30 (Eastern Kentucky), was the principal speaker. He praised the organizing drive being waged by pensioned UMWA members under the guidance of District 28 President Carson Hibbitts and Secretary-Treasurer E. L. Scroggs."

An article May 1, 1956, in the United Mine Workers Journal, page 12:

809 "District 28 Pensioners Continue Their Drive to Organize the Unorganized."

Mr. Kramer: We want to continue the same objection, your Honor.

The Court: Same ruling.

Mr. Rowntree: "The Organized Pensioners' Committee of District 28 is still campaigning valiantly and successfully to enroll Virginia's non-union coal miners into the UMWA."

The last paragraph:

"The public information campaign being waged by the militant, battle-scarred oldsters has proved of inestimable value in the concerted District 28 organizing drive being

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led by President Carson Hibbitts and Secretary-Treasurer E. L. Scroggs."

Article January 1, 1956, United Mine Workers Journal, page 7:

"Pensioners Continue Fight Against Power Co.'s 'Scab' Coal Business.

"The pensioned coal miners of Northern West Virginia on December 17 took a further step in dramatizing their fight to persuade Monongahela Power Co., to buy union mined coal.

"More than 100 of the UMWA's peppery oldsters braved freezing temperatures to hand out leaflets in four cities — Morgantown, Fairmont, Shinnston and Clarksburg—outlining the facts in dispute. These men, all recipients of \$100-a-month pensions from the UMWA Welfare and Retirement Fund, belong to the Miners' Pension Committee of District 31. They represent, among others, UMWA local unions located at Bethlehem Mines, Dawson, Kingmont, Rivesville, Clarksburg, Barrackville, Ida May, Grant Town, Fairmont and Morgantown."

United Mine Workers Journal, March 1, 1957, page 14, a picture with the legend underneath:

"Picketing for the UMWA. These pensioned members of the UMWA, Local Union 602, have been doing their part for the organization in picketing non-union operations in District 2 in Central Pennsylvania."

Mr. Kramer: Your Honor, so I don't need to interrupt, may the record show my continuing objection to this line of testimony?

The Court: Yes, sir.

Mr. Kramer: For the reasons heretofore given?

The Court: Yes, sir.

Mr. Rowntree: An article from the United Mine Workers Journal, August 1, 1957, page 5:

"UMWA Pensioners Renew Fight Against Monongahela Power Co.

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811 • "Approximately 300 UMWA pensioners, members of the Miners Pension Committee, joined forces on July 20 to picket offices of the Monongahela Power Co. in five northern West Virginia cities in protest against the non-union coal buying policies of the big power company. The company is a subsidiary of the West Penn Electric Co. with headquarters in New York City."

United Mine Workers Journal, January 15, 1958, page 6:

"District 28 Organizes Banner Fuel.

"This mining camp—near the town of St. Paul, Va.—was on December 29 the scene of a happy non-holiday celebration when more than 1,000 members of UMWA District 28 gathered to rejoice over the fact that the Crane's Nest Mine of the Banner Fuel Corp. was going to sign a Union contract.

"Banner Fuel reneged on its UMWA contract more than two years ago. Since then, the District 28 pensioners of the UMWA Welfare and Retirement Fund have been spearheading a strike to bring the miners there back into the Union. A picket line was kept going for more than two years. Most of the pickets were the 'old men' of Southwest Virginia who showed up every day, rain or shine, hot or freezing.

812 "Eleven of these veterans worked their 'full shift' on that picket line nearly every day of those two years and were especially mentioned by International Auditor Archie V. Woods at the Bondtown rally."

Mr. Rowntree: Middle of page 218.

813 (The reading of the deposition was continued.)

"Q. Mr. Lewis, as a Trustee on the Welfare Fund did you know that these organized pensioners were carrying on these organizational drives on behalf of the union?

"The Witness: As Trustee for the United Mine Workers of America Welfare and Retirement Fund, I had no knowledge of it whatsoever. No reports. It was never discussed, as a Trustee.

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"Through other sources I knew generally of instances where pensioners had taken an interest in a local contest.

"By Mr. Rowntree:

"Q. Was any effort made by the Trustees of the United Mine Workers of America Welfare and Retirement Fund to sever these pensioners from union activities? "A. Certainly not. They had no jurisdiction in the premises.

"Q. Is it part of the program—"

Mr. Kramer: Wait just a moment.

Mr. Combs: I would like for you to read the rest of that answer.

814 Mr. Rowntree: All right.

(The reading of the deposition was continued.)

"Mr. Combs: And I might point out for the record that I think it would have been a violation of the law if they had.

"The Witness: Certainly. As I previously pointed out when they were discussed by the trustees.

"By Mr. Rowntree:

"Q. Is it part of the program of the union, in requiring these retired pensioners to retain their union membership, that they are obligated to carry on these organizing efforts?

"A. Your choice of words is inaccurate on which you predicate the question. The pensioners are not required to remain members of the United Mine Workers of America.

"Q. I am referring now back to this lengthy discussion we had before about the constitutional amendment with respect to the dues of retired members. The constitution was amended, was it not, to assess dues— "A. Obviously; it has been so testified here. But I point out again that your question is not qualified because it is based on the statement that they were required to remain members. They are not required to remain members, as previously testified. They are free agents and can do as they will without impair-

815 ment of their pension rights. Pensioners are free agents."

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"Q. Do you know what proportion of the bituminous coal production is produced by companies operating under the National Bituminous Coal Wage Agreement, say, as of the beginning of 1958? "A. Yes.

Mr. Kramer: Just a moment. May we have a moment just for a conference?

The Court: Yes.

Mr. Combs: I might point out to counsel that he read in '58, and it should be '59.

Mr. Rowntree: I skipped down to that, "Well, say, as of December 31, 1958."

Mr. Kramer: All right, Your Honor.

Mr. Rowntree: The answer was, "Yes."

(The reading of the deposition was continued.)

"Q. And what is that proportion? "A. Eighty-two per cent is produced under the contract. Eighteen per 816 cent for the non-signatory production. * * *

Bituminous coal only.

"Q. A lot of these small companies went broke after they signed the National Bituminous Coal Wage Agreement, did they not? "A. I wouldn't know what happened to them. I only know that a great many units, continuously through the years, have retired from the business of producing coal.

"Q. You were talking a while ago about the bankruptcy rate in the United States. A lot of these companies were coal companies, were they not? "A. Some of them were coal companies, perhaps; I have no knowledge of it. But certainly they constituted no substantial number in contrast with the national figure."

Mr. Rowntree: There was exhibited here, Your Honor a list of the companies sued by the Trustees of the Welfare Fund in the various states including Tennessee, and we will mark that as the next exhibit.

(Exhibit 39; marked for identification.)

Mr. Kramer: What is now offered in evidence, may it please the Court is a statement or a compilation with reference to suits that were pending by the Trustees for the col-

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lection of welfare amounts owing as royalties to this
817 Welfare Fund, owing to the Trustees as royalties,
and Your Honor, it is of course a legal duty under
the law for the Trustees to collect this Welfare Fund in
amounts owing so that we say that no inference of any kind,
whatsoever, with reference to a conspiracy can be drawn
from the fact that one or more actions may have been filed
in one or more Courts by the Trustees to collect the amounts
which they aver is due and owing to the Welfare Fund.
Therefore, it is incompetent and irrelevant for any purpose
in this lawsuit. I would be glad to have the marshal hand to
Your Honor the paper that he has in his hand so Your Honor
can see what I am talking about.

The Court: Mr. Rowntree, what do you say?

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Mr. Rowntree: Our contention, Your Honor, is that there
was a conspiracy to impose this contract on the small mines,
on the mines that could not afford to pay that the purpose
was to put the mines out of business, that it was part of
this program of stabilization, that it was part of the under-
standing between the major coal companies and the union,
and the Trustees, that this would be accomplished by using
this National Bituminous Coal Wage Agreement as part of
that program, and this is the ultimate result of the
818 imposition of the contract on coal companies where it
is shown from the proof that many of them could not
pay and that was part of the program.

Mr. Kramer: May it please Your Honor, if I may answer,
this doesn't show whether they could pay or couldn't pay.
It simply shows that certain numbers of actions were insti-
tuted and which the law would require under the terms of
the contract and by saying they were performing a duty im-
posed upon them by law, somebody can conclude or guess a
conspiracy, we think, Your Honor, is far beyond the range
of competent evidence, and we object most certainly to the
introduction of this instrument.

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The Court: Are you introducing it as evidence against the Trustees or against the United Mine Workers?

Mr. Rowntree: The Trustees particularly, Your Honor.

The Court: Well, if it is a legal duty, and I assume it is, for the Trustees to institute these suits, then how could that prejudice them?

Mr. Rowntree: If the proof can be—support a reasonable assumption—reasonable conclusion that the Trustees were considered by the union, or that they engaged in a conspiracy for the purpose of putting small companies out of
819 business, this shows the ultimate, final stage.

The Court: Well, I will let it go into the record, but whether it has any probative force, I'll let the jury be the judge. This standing alone, standing alone, institutions of suit which the Trustees, as the Court understands, are required under the law—do you agree with that?

Mr. Rowntree: Yes, sir.

The Court: That is the law, a Congressional Act. Then that alone could not be construed as a participation in a conspiracy by the Trustees.

Mr. Rowntree: Not that standing alone, certainly.

The Court: No, this standing alone, this exhibit standing alone should not prejudice either the rights of the UMW or of the Trustees for the reason that it is conceded by all of the interested parties to this lawsuit that the Trustees were required to institute—or to collect these royalties which accrue under the Collective Bargaining Agreements; and if they weren't paid and past due, then it would be the legal duty of the Trustees to institute such suits, but the Court
820 will not let it go into the record as an exhibit as a part of the overall picture for whatever it may be worth, if anything, have a bearing on the controlling issue in this lawsuit, namely whether there was or was not a conspiracy.

All right.

(Exhibit 39 admitted into evidence.)

Mr. Combs: May it please the Court.

The Court: Yes, sir.

Mr. Combs: I would like to refer back to the deposition, Mr. Lewis' answer on page 221. I think the reporter made a mistake there, and I think we ought to agree in the record in order for it to make sense.

The Court: Yes, sir.

Mr. Rowntree: What page?

Mr. Combs: 221. Mr. Lewis' answer with reference to the percentage of coal by the signatory operators was eighty-two per cent, and then the reporter has it that eighteen per cent for the nation-wide production. I think that should read eighteen per cent for the non-signatory production.

Mr. Rowntree: I agree.

The Court: All right, correct the record accordingly.

821 (The reading of the deposition was continued.)

"Q. Mr. Lewis, is it your position that the policies of the United Mine Workers of America have been dictated from the basis of the best interests of the man in the union?

"The Witness: May I inquire is that an assault on my integrity?

"By Mr. Rowntree:

"Q. No, sir, I just wanted to ascertain whether that is the basic premise from which the union sets its policies: The best interests of the men in the union. "A. As the servant of the union I have made reports of my stewardship to the constitutional conventions of the United Mine Workers and had them approved, through all the years of my incumbency in the office of president.

"The United Mine Workers of America have always regarded me as their spokesman and agent and their
822 servant and have given approval in all circumstances where my acts were in concert with the best interests of the United Mine Workers of America and the union as such.

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"My public record on those questions through the years would seemingly justify my own averments.

"Q. Mr. Lewis, you have received notice, have you not, that many of the men in the union are suffering and are opposed to some of the policies of the union?"

Mr. Rowntree: There is no answer.

We there make reference on the question of notice to the 1956 convention minutes, pages 312 and 313.

Mr. Combs: If you will pardon me, I objected to the answer to that question, because it wasn't specific, and it wasn't answered. I want the record to show that.

Mr. Rowntree: These are statements upon the question of the adoption of the 1956 amendment to the contract on the floor.

823 Mr. Kramer: Your Honor, the statement he is about to read, if I am correct, and, I think, knowing this record as I do, it is, is a statement, and I state frankly to the Court, of some one delegate, one of two-thousand, in opposition. I don't think that has any relevancy because it is very seldom, even in a Baptist convention or a Methodist convention, you can't get some fellow to get up and object.

I don't think it has anything to do with the action taken by a constitutional convention, and we object to it.

The Court: The Court will let the jury hear them for whatever worth, if any, they may have on the over-all picture.

Mr. Rowntree: "Delegate Demchak, Local No. 3648, District 2: I would like to discuss this new agreement and I would like to discuss it from the point of view of men who are not working full time and also men who are not working at all at the present time. As far as the wages in this agreement are concerned, that will be acceptable to me, but
824 there are other things besides wages. I am thinking particularly of the unemployed miners that we have.

"Prior to the mechanization of the coal mine where I worked we had 1100 workers. With the introduction of

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machinery that cut us down to 800, and now there are 400 working. There are 200 on the panel. Others have gone elsewhere to seek employment. There are 200 who expected us to come out here and try to get an agreement calling for a shorter work day so some of these men could be re-employed."

Delegate Brown, page 314, third paragraph.

"But I do think, Mr. Chairman and delegates, that from now on in the future, I believe that we have got pretty near to the top notch in wages and I think that the next negotiation which one year don't take very long to roll around, I think that according to the hazards in the mining industry and the fumes and the noxious gases that we should now try to start negotiating and shorten our hours per day."

Delegate Croyle:

"I suppose I am a little bit like the donkey charging at a windmill, but I do want to express my resentment against this contract, which fails to recognize the economic time of day in the coal industry. Just awhile ago Mr. Lewis
825 said the United Mine Workers can't be destroyed by the Democratic Party, the Republican Party, or the Communist Party. Yet he would bring the machinery into the mines without shortening the working day and they won't have to destroy us. There won't be any of us left.

"I was on the third shift the night the report came out about this rumored contract. I will say one thing, I never saw one man in our mine satisfied with the increase in pay without reduction in the working hours. I feel that it has been over 50 years since we established the eight-hour day, and I think if we are ever going to have a reduction in the working time, it is about time for us to start talking about it."

Delegate Whitlatch:

"I want to assure you, Mr. Chairman and all of the International Officers, districts and delegates, that I am not going to and never have criticized the action of the International-

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al Union nor the District but I do want to say that I have always respected and upheld them to the highest because I think it is the greatest organization on earth. But I do have some comments I would like to make, as a scale committee-
man, being in close contact with the various local
826 unions and with the individual mine worker at home in our own mine. There are two things that need to be justified within our contract other than wages. Now, who doesn't want more money? I am not going to be one who would say that I didn't want this raise or that the men back home didn't want the raise. But I think that we do reach the point in wages whereby simetimes maybe it begins to hurt and maybe we could negotiate it in some other way, some other form or manner that it might mean more to the mine workers. Now, what I meant by that, I know the operators could afford this raise or we wouldn't have gotten it. Now, if we could have gotten it and shorter hours, it would have meant that there would have been more employment. Some people say step into the other field of employment. I have got 26 years in the mines myself and at my mine maybe when I get back home there will be another piece of machinery in there which will cause me to be put on the pan because our seniority clause reads 'job classification.' Therefore, my seniority in all those years doesn't mean anything because the other man on the job has got a year or two more. And there will be men that were hired there in the last two months that will stay.

827 "I think those are inequities and I think they need to be justified. As President Lewis says, there isn't much more there because if there had been, he would have gotten it. I believe that. But there will be more, and we want it to be more, because if we sit idle and don't mechanize in the coal industry and every other industry within the United States, we will be sopped in by some other country. We've got to mechanize, we've got to go forward, and the production is going to increase. Don't fool yourselves, it is going to increase. The production per man is going to

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increase. We know that it is going to. So, I think now since this contract has been drawn up and all but accepted, I don't know much else to do but to accept it. But I think that these things should be given a thought. I have a stack of resolutions that high and it is a demand of the mine workers.

"Now, I think the understanding before ever there is another raise in which there will be a raise production and there will still be more money. I think it ought to be given to the mine workers in some other manner or form other than wages. And I know that is what I have met with, the demand of the men back home.

828 "Now, just for a second, if they will permit me, the coal mole is a machine that is taking place in the mine that I work for and the company that I work for. And a crew of eight to ten men got approximately 30 cars of coal. They put in a coal mole and with five men they produce about 60 or 70 cars of coal. So, you have cut the crew in half and you have doubled the production. And those things are going to continue to happen and the bad feature about it, if there isn't something done, the man that reaches the age of 40 to 45 to 50; along in there, is generally the man let out and you show me some place he can go and tell them he is a United Mine Worker and 45 or 50 years old and he can get a job other than in the coal industry. And there is a panel at nearly every mine in our District, so you can't do that. So, I want to say this, and I want to extend my appreciation to the International Officers and the Districts for the great work that they have done. But I do hope that in the future we take these things under consideration because if we don't, there is no question about it, there is not going to be too many of us left, and the \$30 or \$40 a day that you may get is not going to do your neighbor across the street any good if he don't have a job."

The statement of Delegate Matula, bottom of page
829 318.

"As a representative of my Local we are mostly interested in hours." * * *

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"According to Mr. Kennedy when he was commenting on the contract, he stated he thought the increases in wages were the best for the economic condition. I wonder whether that is so, whether a shorter week would be better. We work in the mines in my district, jump on a belt line and ride maybe a thousand or two thousand feet, put a respirator on and go up to the face and work. When we grab a drink of water or a bite to eat, there is a man standing behind us with a stop watch. We work a machine and try to keep up with that machine. I wonder which wears out first, the man or the machine.

"In our mine a shorter work day would be of much greater benefit to us than a wage increase."

Delegate Mentz:

"I believe in all the phases in the contract excepting our seniority clause, the hours and the wages on this basis: Our Local instructed us to seek a six-hour day at the same pay where the companies can put a four-hour shift on per day and employ more men in their mines and give us all these benefits, all these miners that have been laid off. In 830 1933 we had in the neighborhood of 500,000 bituminous coal miners in the United Mine Workers. Due to the abandonment of mines and modernizing machinery in the mines, we have decreased to approximately 250,000."

"By applying a six-hour day at the same basic pay, the company that I work for has three mines within a five-mile radius. They employ in the neighborhood of 300 and some men at the 1077 Local No. 2 Mine. They are putting out their quota per month through the No. 1 and No. 3 mines. Those men are idle and walking the streets, not only in that mine, but in other mines throughout the bituminous area. That is why we are advocating a six-hour day.

"The money is all right we agree with that. But we are looking after the welfare of all the individuals who were laid off due to the mechanization of mines. I am financial secretary of 2262. We have been informed by the company that they are anticipating a layoff, the same as they did at

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the last convention, when I was here and I was notified they laid off 162 men. I was advised to stay. Other representatives went back and took care of the lay-off for me.

831 "We are interested in each and every individual."
Now, skipping.

"Now, 500,000 coal miners, reduced to 250,000 is a lot of men. You want to remember this: Many thousands of you men—I hope you are never laid off—but, if you don't have your 20 years within your 30 years, you will never get another job in the coal mines as it applies in District 6 down there where I am working because they will not hire you after you are 45. Men from . . ."

Skip to Delegate Lapsley:

"We are perfectly satisfied with the contract. I think the contract is fine. I want to compliment the Executive Board members and you, Mr. President, for making this contract. The question is about the seniority. The more money you get out of the companies, the more men they are cutting off. We want to know if there is some way we can protect our older men from being cut off and put on the street as soon as we get a raise.

"Now, on our further contract, as we get a raise then the company cuts these men off. This company we work for has practically six mines. The old men who have made this wage possible for the younger men today are being shifted
832 around and put on the sidelines. They are cut off with no place for them to go. We men who are working are enjoying the fruits of this contract and that is fine, and we think no more about it. But we want to know about the older men who are being cut off and who have made this wage possible for us.

"The men who have made the wage possible are enjoying it today, but they are being laid off. Those are the men we want to look out for. We don't worry about the men who are working, because they have a job, but the men who are being shifted around by the company and are being cut off, those are the men we need to help."

Delegate Sufritz:

"Mr. Chairman, it seems to be pretty obvious from the discussions going on here that what a lot of men are concerned with are the conditions; the conditions of work. The wages I have heard no one criticize. They are all very much in favor of them and so am I. But, what is mostly of concern to them is the conditions under which they have to work."

The third paragraph:

"And in the form of mechanization it reaches a new depth and new pressures are being put on the men. That is what they feel. That is what they protest against, that is 833 what they try to have corrected. They sent us here to see if we couldn't do something to correct these things which they feel are wrong."

Delegate Dugan:

"Now, we have heard talk about classification, and I think that we should continue to talk about classification and life expectancy . . ."

Down to the middle of the paragraph.

"But now we have a more hazardous and a more dangerous and a more health deteriorating situation than the banker and the school teacher and a lot of other businessmen. We have the coal dust to contend with. We were told, I know when I started in the mine, that they were loading on an average of 3 tons of coal a day. Today they are loading 11 tons. But at that time the cutting was done at night, the shooting was done at night, there was less dust at that time than there is now with these machines."

"These fellows at the faces are wearing masks and they are not getting the air. The heat is great from these machines and it is deteriorating their health more than it does the banker or the school teacher or the other business people."

834 Mr. Combs: May I point out, your Honor, that the excerpts read by counsel are some seven or eight delegates' speeches that were made at the convention.

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They were part of the speeches that he read. A convention that was composed of 2,000 delegates.

The Court: Yes, sir.

Mr. Rowntree: That is true. All 2,000 did not speak, however.

Mr. Kramer: No, but they are speeches. There are a lot more members of the delegation there in favor of it. Simply one of these debates which we say does not show any conspiracy whatsoever.

Mr. Rowntree: Talking about notice there to the International officers.

Mr. Kramer: Some people said it is good; some people said it was bad, and the majority ruled.

The Court: Mr. Rowntree, what is the purpose of this testimony?

Mr. Rowntree: The notice to the International officers with respect to conditions in the field.

The Court: All right.

Mr. Rowntree: At the bottom of page 230.

(The reading of the deposition was continued.)

835 "Q. Do you recall, Mr. Lewis, that there was quite a bit of discussion in the 1956 Convention on the presentation of the 1956 contract with respect to the continuance of the policy of the Union to seek constantly increasing wage rates and its resulting effect on the unemployment situation?"

Mr. Rowntree: Well, skip to page 231, middle of the page.

(The reading of the deposition was continued.)

"Q. Do you recall discussions on the floor of the 1956 convention with respect to the effect of this policy of constantly increasing the wage and the effect of that policy on the unemployment of miners, and also discussion of conditions in the intensely mechanized mines? "A. I recall that there was general discussion in the convention on all of these matters; things pertaining to the contract. And, as a constitutional convention charged with making policy—and the action of the convention is a binding thing upon this officer,

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this former officer—the details of those discussions are not in my mind now, and I would have to read the whole record to have any understanding of what point you are getting at in connection with that.

“The convention decided. I like all others present, accepted the convention’s decree, and considered it as my instructions.

“Those questions are decided, passed by, and forgotten, except as they bind policy or affect current efforts.

836 “Q. And is it not true, Mr. Lewis, that after that 1956 convention the union executed the 1958 contract with another wage increase and without any change in the working time of the men and without any change in the seniority rules? “A. That is entirely possible. It had no bearing, however, on the discussion of the convention.

“Q. Mr. Lewis, was the ability of the International Policy Committee, the International Executive Board, and the International Officers to secure approval of their acts by the various conventions the result of the intense central control of the union by the International Executive Board and officers? “A. Certainly not. Certainly not.

“The convention of the United Mine Workers is probably the most democratic—if I may use that term—parliamentary body of magnitude in existence in the United States.

“Every major item—the officers’ reports, the constitution, and the resolutions, of which there are usually hundreds—must come on the floor for disposal and cannot be killed in committee. The sponsor of the resolution cannot be deprived of the right to speak on it whether the committee concurs, non-concurs, amends, or substitutes. If he elects to speak he can be heard.

837 “There is no ‘central control’ outside of that strength that came through administration, as in the case of all of our national affairs, through meritorious service in that office.

“My influence in the organization was solely derived from approval by the membership of my previous efforts and

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previous accomplishments in their interest. That is far—under our American concept—from any connection with the exercise of so-called organized influence.

"The average coal miner has an emphatic personality. In a broad sense of the word, it is primarily a requisite of that vocation.

"He is a man of courage. He is not deterred in his convictions by opposition. He is surrounded by the hazards of the industry. It is second nature with him to perform what ordinarily are called heroic acts in the face of danger to his comrades and associates. And every day, in any mind of magnitude, he risks his life and his limbs and the well-being of his family in his continuing his work as a mine worker.

"So the idea that any member of the United Mine Workers is afraid of any officer of the organization, from the top down, is completely and genuinely absurd and farcical.

838 "The United Mine Workers are not ruled by fear of another's actions in command of their organization. There is no such creation. No dictatorship exists. The elective process governs.

"Q. Now, Mr. Lewis, I make reference to the answer of the union to Interrogatory Number 21 of Set Number 1 pertaining to the appointment of the International Executive Board members; the answer indicating that, in 1955 and 1956, as many as twenty-one of the thirty Board members were appointed and approved by the International executive Board.

"Is that your recollection? "A. Those designations, elections by the International Executive Board generally came after the ability of the industry—the ability of the district—to operate and to finance the payment of its officers.

"The district's membership perhaps had dwindled to a point where the district could not pay its own way and was not capable of rendering the service.

"The districts, by the way, are merely service stations

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for the membership; instituted so that representatives of the organization will have closer contact in the immediate area where the mine worker lives and is employed.

“In the handling of disputes and the constitutional questions that arise affecting the membership of individual members. And it is absurd to believe,—from
839 every administrative standpoint it is absurd to believe that the district could be represented with a full corps of elective officers when its membership perhaps does not represent but a small proportion of the total number of mine workers in that area.

“So all those things were done with the approval of the International Convention over a period of twenty-two years; and for twenty-two years, at each convention, the matter has come up and the convention has ruled after full and exhaustive debate oftentimes.

“Q: We make reference to some of those debates— “A. Invariably, when it was possible, the men designated as Board members ex-officio were men previously elected to that office by the membership and merely continued their service at the expense of the International Union from whom they derived their pay.

“There never has been any question raised, so far as I know, about the personality of any of the individuals thus designated.

“The speeches of Mr. Demchak, to whom you allude— ‘Alas, poor Yorick, I knew him well’—I knew him well and know him well; and he has retired now from active mining and is enjoying the superb delights of having a pension
840 plus his social security, plus anything else that he was able to save during his working years; and he is one of the most satisfied, happy men that I know at the moment.

“He no longer is making speeches.

“Mr. Demchak, of course, had advanced political views. He believed that any agent or servant of the government— this is my concept of his belief from listening to him—or

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of any institutions operating under the American flag, and who had to deal with public welfare or represented great numbers of people as members, should be elected to office by what he called the rank and file. And he rode that horse all of his working, active life, and he wanted perfection in democracy, as he called it, while the average listener to his discourses wanted some bread and butter in the meantime and they would disagree with him.

"And I think in the discourse to which you alluded, when you named Mr. Demchak as one of the participants, after that debate concluded my recollection is that there were eight votes in the convention in favor of Demchak and something over two thousand against; and the convention ruled and the officers were bound by the ruling of the convention.

841 Mr. Rowntree: At this point, your Honor, we made reference to a number of pages concerning debates over district autonomy in the United Mine Workers' convention. I think your Honor is very familiar with those things.

Can we have a stipulation that the question of autonomy in the districts of United Mine Workers of America was raised at each convention from 1948 through the convention of 1956 and after considerable debating the resolution of the committee opposing autonomy was each time voted down, was voted in favor of and thus autonomy was not given to the districts? Autonomy being the right to elect their own officers.

Mr. Combs: Of course, your Honor, what he is talking about is a bit difficult to follow as to just what he wants. There are some districts, as Mr. Lewis testified, who have autonomy, partial autonomy. Some of them don't have any of their officers elected.

There have been debates in each of the conventions on the part of the delegates. The policy that Mr. Lewis has testified to and is in existence is overwhelmingly adopted at each of these conventions.

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Now if that will satisfy counsel, it is pretty much accurate facts. Now to get down to particular stipulations, I couldn't get any further.

Mr. Rowntree: That is all right.

By Mr. Rowntree:

"Q. Mr. Lewis, do you know a gentleman by the name of R. U. Black in District 19? "A. In where?

"Q. District 19. "A. R. U. Black?

"Q. R. U. Black. "A. The name means nothing to me at the moment. Could you be a little more definite?

"Q. Let me see. His name appears some seven times on the list of delegates from District 19 at the 1948 Convention. Pages 398 through 402.

"For instance, he was a delegate from Local Union 6130, Middlesboro; Local Union 6936, Balkan, Kentucky; Local Union 8803, Capito; Local Union 8852, Ferndale, Kentucky; 8961, Middlesboro, Kentucky; 8970, Balkan; and 9038, at Hutch. In each instance having one vote at the Convention for each one of those Local Unions.

843 "Q. Was there a practice of having a single individual having a number of votes representing several local unions at these conventions? "A. Under the constitution each delegate is entitled to represent a membership up to 500; having, on a roll call basis one vote for each 100 of the members. So some delegates represented 100 or less. If there were only ten men in the local union he got one vote. If he had 101 members in his local union he would be entitled to two votes. And so on up to a limit of five.

844 "And a local union was privileged to have two delegates present if they elected to bear the expense of sending two delegates, if they had 101 votes or more, up to 199, they would be entitled to three delegates, if—five votes, one delegate."

Mr. Kramer: That word "votes" is evidently an error of the reporter, because it is members, not votes.

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Mr. Rowntree: That's right.

"So when they list—the Credential Committee, in preparing the Credential Committee's report to the Convention as to the seating of delegates and the qualifying of them, they would list the number of votes on roll call to which each member was entitled—each delegate was entitled.

846 "Q. Mr. Lewis, the 1952 contract, you recall, had a provision in it, talking about the clause in the 1952 contract;

'As a part of the consideration for this agreement the operators signatory hereto agree that this agreement covers the operation of all of the coal lands owned or held under lease by them or any of them or by any subsidiary or affiliate at the date of this agreement or acquired during the term which may hereafter (during the term of this agreement) be put into production. The said operators agree that they will not lease out any coal lands as a subterfuge for the purpose of avoiding the application of this agreement.'

"Now when a non-union coal operating company, such as Osborn Mining Company, sought to go on lands owned by a signatory operator, he would be barred by the terms—be barred from the land by the terms of that clause that

I have just quoted? "A. I wouldn't think so. I
847 cannot give a legal definition but it is my understanding and belief that he was not barred.

"Q. Did you not have conferences with signatory operators, such as with the president of Black Star Coal Company, with respect to who could take leases on the coal lands of that operator and who could not? "A. The signatory operator holding such lands binds himself in the contract, through his negotiating representatives, to certain stipulations.

"It is reasonable to assume that any lease which he

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would effect would protect him by an iteration of the clause to which you refer.

"It merely narrows the terms of negotiation between him and an application for a lease.

"Q. Do you recall conferences you had with Mr. Hill of Black Star Coal Company? "A. No. It is one of innumerable conferences, I suppose, which I have had through the years which I do not always remember day by day.

"Q. Mr. Lewis, these largest coal companies in the country have acquired tremendous reserves of coal lands; is that not right? "A. I am at a loss to understand what you mean by the term 'the largest coal companies'.

848 "Q. I am speaking of Peabody Coal Company, Consolidation Coal Company, the Pittston Company, Pittsburgh Midway Coal Company. "A. May I ask if those companies thus named are the only companies that you would include in that category in the industry?

"Q. I would include West Kentucky Coal Company, and Nashville Coal Company. Yes, those are the ones I am talking about."

* * * * *

"The Witness: I assume that every coal company in the business acquired such reserves to the degree that they are capable of acquiring them—purchasing them, leasing them, paying taxes thereon or royalties.

"As to the amount owned by the several companies I have no knowledge.

"I suppose that it might be assumed that the well-financed companies, with great resources, could go further in acquiring reserves than a lesser company, less well-financed, smaller in volume of production and with less capable management.

849 "The changes in the industry have been very great. Thirty years ago reserve coal lands could be acquired, to justify the sinking and development of mines, at an average price of two dollars per ton year.

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"Today, due to the increase in the cost of the operation of coal mines,—running to power, supplies, machinery of all characters, wages, taxes, —we must not forget that these corporations pay a 52 per cent corporate tax and that they only enjoy the disposition of 48 per cent of the money they make—which constitutes a burden of tax which I think should be reduced, in order to permit the economy to expand in a requisite manner to meet the obligations of our increasing population. What that ownership is in the various companies, I don't know and have no interest in it. But if the company is contemplating the erection of a plant capable of producing, say, two thousand tons or three thousand tons a day or more, depending on whether or not they utilize multiple shifts in the operation, their original investment is greater, to protect the life of that company; to insure that the revenues from the company on the investment thus fixed would be adequate to amortize that company and liquidate the credit which has been entailed through
850 the erection of the plant.

"So of necessity we find all companies now undertaking to expand their production and faced with the problem of acquiring enough acres to justify the investment in the operating plant, the producing plant, and its various auxiliaries.

"So mine workers have no knowledge of the specific plans of companies small or large as to the amount of their reserves, or have nothing to do with justification of their investment in those reserves. It is part of management's obligation.

"By Mr. Rowntree:

"Q. Mr. Lewis, has the union expended some of its funds for the purpose of tying up coal lands under the union contract? "A. Any investment that the United Mine Workers may have made has all been in the interest of the United Mine Workers of America and pursuant to declared and legal objectives.

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"Q. The 1958 contract, Mr. Lewis, brought in the Protective Wage Clause, did it not? "A. If that was the date, yes."

"Q. Did not, in general terms, this clause prohibit the signatory operator to buy or deal in coal produced
851 by another operator who was not paying a scale of wages commensurate with the union contract scale?

"A. It had nothing to do with the union: It was a question of substandard mines. And the operators stipulated that they would cease their buying of coal to be sold in the open market in competition with their own production, from substandard mines; mines that did not contain a standard of safety in accordance with the law made and provided, the State and Federal laws, mines where substandard wages were paid.

"Q. What would be substandard? "A. Mines that were substandard because of their whole structure and their inefficiency.

852 "Q. What would be a sub-standard wage? "A. Any wage below the agreed wage or the going wage of the industry, as defined by Congress through the Walsh-Healey Act.

"Q. Wasn't that tied pretty closely to the union scale as contained in the National Bituminous Coal Wage Agreement? "A. If the facts bore out with verisimilitude the various problems there. Then and only then.

"Congress passed the bill, a minimum wage bill, and created a division of the Department of Labor to enforce it; and mines that pay less than the standard fixed by Congress, through the Labor Department Walsh-Healey administration, are in violation of the law, of course.

"Q. I want to take up the Walsh-Healey a little bit later; but on this protective wage clause in the 1958 contract some of the operators did not want to sign that contract, did they? "A. As to that I can only say that whatever the sentiment was among the operators that the negotiating representatives executed the contract with that arrangement con-

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tained therein. As to the bickerings among the operators I couldn't testify as to those from my own knowledge.

853 "Q. Some of the operators, under the previous contracts, were buying non-union coal, were they not?

"A. Not non-union. Substandard coal.

"Q. Well. "A. I wouldn't classify it as 'non-union'. Any substandard mine.

"Q. Some of the operators were buying substandard coal? "A. It is so averred. It is public knowledge that that was the case.

* * * * *

"Q. Now, some of these large coal companies had control of the biggest markets in the country— "A. Before you get to that, may I ask you to define 'large'?

"Q. Talking about Consolidated Coal Company. "A. No. No. Give me a rule-of-thumb there. At what point does a company cease being 'small' in your estimation and become 'large'? Would it relate to production?

854 "Q. I was trying to use a phrase similar to the expression you have used. "A. It isn't a 'phrase'— if I may be permitted to interject. It is a generality.

"Q. At one time you used the name 'large combines' and I would say any of the ten largest coal companies in the United States. "A. The production of what tonnage makes a company 'large' in your estimation? Give me a rule-of-thumb by which I can be responsive to your interrogatory.

"Q. A company that produces coal on the scale of West Kentucky Coal Company. "A. Generalities, again.

"Every company produces so much coal per annum. They have a rated capacity of so much. They may not attain that rating in their output. They produce what they can market—market and sell.

"At what point does a company cease being 'small' and become 'large'? How many tons?

"Q. Mr. Lewis, you have stated that the tendency in the industry is to concentrate into fewer and fewer units of production and that the tendency to concentrate into these

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large combines is what the industry is bound to come to. "A. I disagree with that word 'bound', sir, in interpreting my position.

855 "I have pointed out the trend. I have pointed out and been specific about the progress in tons and in percentage during the years, the last twenty-five years.

"I have pointed out that the velocity of that change or the tempo of it has been increased in recent years.

"It is dormant now because of the depression and declining industry and the low level of industrial activity in that contract. So that corporations that in the nature of things one would assume would grow in their output and in their general dimensions are withholding affirmative action on the expansion question until they find out whether their cash reserves and equivalent will be sufficient to tide them through a depression the length of which they cannot now determine.

"I have been most explicit about those things. I do not want to deal in generalities that fit only the company that you may have in mind, and not be advised of what companies you have in mind with the exception of naming a half dozen coal companies that come easily to the end of your tongue.

"The witness is asking for fair play on this proposition.

"Q. Are not these companies that I have named the ones that are following this tendency? "A. They are
856 among those.

"Q. Let me finish my question, Mr. Lewis.

"Of buying other companies and forming themselves into these large combines. And I make specific reference to the acquisition by Consolidated Coal Company of Pocahontas Fuel Company. The acquisition by Peabody Coal Company of a number of other coal companies. The acquisition by the Pittston Company of the Clintsfield Company. The acquisition by West Kentucky Coal Company of the Nashville Coal Company.

"Now these companies are the ones, are they not, that are following this tendency of binding up large combines to

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take over the production of coal in this country; are they not? "A. They are among those who are doing that."

"The Witness: This witness did not use the word 'combines' because this witness believes that combines, in the sense of ordinary usage of the term, do not exist in the coal industry.

"By Mr. Rowntree:

"Q. I am talking now about the speech, Mr. Lewis, at the 1958 Convention, page 310, the first full paragraph on that page:

" 'These great combines now being formed in the 857 industry'.

"Mr. Combs: He went all through that.

"Q. And I ask you are not these companies that I have named, these 'large combines' that you are referring to there or these are the kind of combines that you are talking about? "A. This witness used the word 'combine' in that address in relation to the mergers in the country, the consolidations of coal companies; and in other sections of various public addresses in this record, and elsewhere, this witness has pointed out the advantages to the public interest in these mergers and has defined specifically the advantages which would affect the modern process of mining coal for public use.

858 "Q. Is it not true, Mr. Lewis, that the union has conducted campaigns against some of the large consumers of coal to drive them into buying coal from signatory operators under the union contract? "A. Can you be more specific —

"Q. Yes, sir. "A. — in identification?

"Q. I refer to pages 376 through 378 and also page 380 of the 1956 Convention Minutes."

Mr. Rowntree: This is upon the question of the resolution in aid of petitioner's committee. Page 376 is where that resolution starts.

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Mr. Kramer: We have a copy.

Mr. Rowntree: This resolution is with respect to
859 accommodation of the Pensioner's Committee which
was sponsoring the effort to get West Penn Electric
Company to buy union coal for its Monongahela Power
Plant, and with respect to this matter President Lewis states
at page 380:

"The mining industry in Western Pennsylvania, North-
ern West Virginia and Eastern Ohio are among the principal
customers of this great power combination. The coal
operators find themselves without influence in this situation,
although they would like to sell their coal to this company
at a price that could yield them a return on their investment
because they fear that this giant concern would withdraw
its patronage from any coal company that objected to their
policy of buying non-union coal that pauperizes the
community where their power plants are located.

"We have had conferences with this company before.
They are arrogant in their power;"—and so forth.

Down to the last full paragraph.

"I want to assure the West Penn Power Company that
the day when they continue to follow that policy is rapidly
passing, and that within a very short length of time the
West Penn Power Company and its directors, with
860 investments in many business institutions of the
American economy, will be required to pay for coal
at their coal barge plants, or at any other plant they have
a price which will enable men to live."

861 "The Witness: The answer to your question, as
phrased by you, is no. We have not attempted
at any time to drive these consumers into using coal
produced under the wage agreement.

"If you change the word 'drive' to 'induce', then I would
say we have tried to induce the patronage by these
companies, in the coal that they consume in their varied
operations, of mines where coal is produced under American

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standards and in accordance with the American concept; namely, paying the going wage rate, the recognized rate in the mining industry.

"It is true that we have sought to induce them to do so.

"It gets you right down to TVA, a governmental agency, whom we have tried to induce to purchase coal mined under the standards of the American taxpayer whose money they use in the operation of this vast edifice.

862 "Q. Is it not true that the United Mine Workers of America have acquired stock in Tampa Electric Company, Kansas City Power and Light Company, Cleveland Illuminating Company? "A. I think you have a record given by competent agents of the Union.

"Q. And also Union Electric. Yes, we happen to have a record. "A. Well, you have the answer.

"Q. Yes. Now, turning to Tennessee Valley Authority. This is a United States Government operation; that's right, isn't it? "A. It is. And the average citizen so assumes and so do I. If you want verification, why—

"Q. And the Walsh-Healey provisions are applicable to it as such a governmental operation?"

Mr. Rowntree: I think that is generally assumed, too.

863 Mr. Rowntree: No, sir.

We want to introduce this exhibit.

Mr. Kramer: That is what I thought, and that is the reason we want to raise the question.

These are important and rather far-reaching. We would like to be heard out of the presence of the jury. It is 4:20 and we could hear it this afternoon, if your Honor cares to, unless—

864 The Court: All right. Let the jury be excused until tomorrow morning at nine o'clock.

(Thereupon, the jury retired from the courtroom and the following proceedings were had in the absence of the jury.)

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The Court: Gentlemen, I think I have the point which you have in mind. For that reason, I want you to be very brief. I am familiar with the case that involved the railroad.

Mr. Kramer: The recent Supreme Court decision.

The Court: Yes, sir, the railroad and the trucking companies. What is the style of that?

Mr. Kramer: The Noer case, N-o-e-r.

The Court: I am familiar with that case. Just state very briefly what you want me to know.

* * * * *

Mr. Rayson: Your Honor, quite briefly, it is this. United Mine Workers contend that it had a right to go to the Secretary of Labor and to present its case for the establishment of a minimum wage under the law. It had a right to present evidence on the question.

865 The Secretary of Labor found that the minimum wage, the prevailing wage in the coal industry was thus and so.

Mr. Rowntree is going to undertake to introduce an exhibit which will show that that wage was considerably higher than other minimum wages established by the Secretary of Labor.

It seems to me that that point is very prejudicial. But apart from that, we think it is incompetent as evidence to submit to the jury to permit it to draw an inference on any point.

The Court: Well, now, what you said about the union's right to petition the Secretary of Labor is correct. The parties petitioned the government and that is what was held, either implicitly or specifically in the Noer case. If that is all there is to the matter, then you are right. And the Court agrees with you and is in full accord with you. I understand there is more to this.

Mr. Rowntree: Yes, sir. We fully set out our position in our brief, your Honor.

The Court: Briefly, it is your contention what? I have read your brief.

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Mr. Rowntree: That when the effort is to take over a market, a government market, we get an entirely different question.

866 The Court: Then you have that \$10,000 spot shipment.

Mr. Rowntree: That is right.

The Court: Gentlemen, I am going to let them go into that for whatever bearing it may have on the overall picture.

It is my opinion that the opinion in the Noer case doesn't preclude going into that question under this theory of the case.

Then when he asks the question, if you want to, renew your objection to that specific question and I will give it consideration and pass on it. But I do hold as a matter of law, under his theory, that he has a right to go into that question, and the Court will overrule your objection, which is general at this time, but allow you to renew it when the specific questions are asked.

Mr. Kramer: May I say just one word before you adjourned?

We further insist, as a part of this objection, that the fact that the wage set under Walsh-Healey may be higher than wages set for other industries or for whole industries elsewhere cannot be used as evidence of conspiracy.

867 The fact, aside from your Honor's previous ruling from that, the fact, that he determined that a higher rate, and even at the insistence that they are going to say of the union, and the fact that the Secretary of Labor, upon proof presented, found that a higher wage for the sale of coal to TVA, coal was produced and had to pay a higher wage than was necessary to pay for others, cannot be used for evidence of a conspiracy, because it was the determinations of a governmental agency.

I want your Honor to have the benefit of our insistence. They are insisting that the wage paid was higher.

The Court: Mr. Rowntree, unless you have more than that, the Court will hold that there is nothing wrong in that,

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petition to a public official, and it is not a violation of law, and it will end right there.

As I understand from your brief, there is more to it than what the gentlemen have indicated.

Mr. Rowntree: Yes.

874 (The reading of the deposition was continued.)

"Q. Mr. Lewis, some of the large coal companies—particularly Consolidation Coal Company and Pocahontas Fuel Company—participated in proceedings with the union whereby the Secretary of Labor made a first determination of a minimum wage in the bituminous coal industry; is that not right?"

Mr. Kramer: We are continuing our objection, your Honor, for the same reasons heretofore stated.

The Court: Same ruling.

"A. That is correct."

The Court: Members of the jury, the coal companies had a right, a legal right, to petition the Secretary of Labor to fix the wages at certain figures under what is known as the Walsh-Healey Act, and the fact that these coal companies did that shall not be construed by the jury as wrong or as prejudicial to their rights.

The Supreme Court of the United States, in a recent case known as the Noerr decision, held that political activities engaged in jointly by two or more parties do not violate the anti-trust laws; that under our government two or more parties have a right to combine and work together in political activities and by so doing they do not violate any law of our government. And keep that in mind as

875 you hear this—keep that rule in mind as you hear this testimony.

Mr. Kramer: Your Honor, your Honor said "coal companies" had the right to petition. The same right your Honor has now explained to the jury is applicable to the trustees or by any other person or citizen or organization.

The Court: That is correct. I say, two or more citizens

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or two or more companies may engage in political activities by petitioning their legislators or the executive branch of our government to do certain things, and such petitions, or such activities, political activities, upon the part of persons, firms or corporation, are not violations of the law.

Mr. Rowntree: If your Honor please, might we have an instruction along with that that there may be a violation of the anti-trust law where a purpose is to monopolize a specific government market or to restrain the trade of others selling—

The Court: It is a violation. What makes anything along that line a violation of law is for two or more persons, firms or corporations, to join together or to conspire to fix prices or to monopolize an industry or to attempt to monopolize an industry, and unless they do conspire
876 together, agree together, to do those things there could be no violation of law. But if they do those things, namely, conspire to monopolize a certain market in interstate commerce or to attempt to monopolize a certain market in interstate commerce or to restrain trade in interstate commerce, then that is a violation of law.

It is the unlawful agreement that makes it a violation of law, or the conspiracy by two or more parties to do those things that makes it a violation of law.

All right.

Mr. Rowntree: We refer at this point to page 546 of the 1956 Minutes of—before doing that, I omitted the United Mine Workers Journal of February 15, 1955, pages 4 and 10. I think we had better introduce that one as an exhibit.

We offer that paper as the next exhibit. I believe the whole exhibit will include pages 4, 10, 11 and 12.

(Exhibit No. 42 was marked for identification and filed.)

I read an extract from that, your Honor. An article headed, "Lewis Calls for Halt to U. S. Purchase of 'Dog-Hole' Coal; Asks Minimum Wage."

877 "The UMWA and major soft coal producers,"—

Mr. Kramer: Just a minute: Your Honor, this is subject to our objection for the reasons heretofore given.

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The Court: Yes, sir.

Mr. Kramer: It is again with reference to application to the government of determination of the prevailing wage.

The Court: Yes, sir.

Mr. Rowntree: —“quarterbacked by President John L. Lewis of the International Union, have called on Secretary of Labor James P. Mitchell to promulgate a prevailing minimum wage for the bituminous coal industry to prevent ‘dog-hole’ non-union operators from doing a ‘push-cart’ business with government agencies at cut-rate prices that undermine the economic stability of America’s basic fuel industry.

“In addition to the International Union, the petitioners asking for the wage declaration under provisions of the Walsh-Healey Public Contracts Act are the Pittsburgh Consolidation Coal Co.,”—

Again, I would like to say that that company has changed its name to Consolidation Coal Company.

—“largest commercial producer of soft coal in 878 the nation, and the Pocahontas Fuel Co., Inc., one of the largest of the Southern companies.”

The Pocahontas Fuel Co., Inc., was later merged into Consolidation Coal Company.

“Public hearings on the matter got under way February 1 in the Auditorium of the National Museum of National History in Washington. Conducting the hearings for the Secretary of Labor is Hearing Examiner Clifford Grant.

“Appearing on behalf of the UMWA in addition to President Lewis, are Secretary-Treasurer John Owens, and W. A. (Tony) Boyle, special assistant to President Lewis and president of District 27. Other witnesses who appeared in support of the petition were George A. Lamb, manager of business surveys for the Pittsburgh Consolidation Coal Co., and Hugh R. Hawthorne, general counsel and director of the Pocahontas Fuel Co., Inc.

“The UMWA’s legal representative was”—and there they give the name of counsel.

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On page 10, in the middle of the third full paragraph—

Mr. Combs: May I inquire of counsel to read the
879 whole paragraph.

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Mr. Rowntree: We will go on through that paragraph and the three following paragraphs, and that is all we will read.

“The petitioners feel, in requesting this affirmative action by the Secretary of Labor, endowed with authority under the statute, that they are in harmony with the declared intent of the law as uttered by the Congress and that they are in harmony with the conclusive findings of the Supreme Court of the United States as to what the act was intended to do and the effective administration of its provisions. One governmental agency, to wit, the Tennessee Valley Authority, has been a tremendous offender against the declared purposes of the Act and in the purchasing of the coal requirements for that great enterprise has consistently violated the spirit of the act in all their business transactions.

“The board of directors of TVA could say legalistically that there has been no legal promulgation of a prevailing minimum wage under the provisions of the statute
880 in the bituminous coal industry. However, there has been no estoppel against the Tennessee Valley Authority putting into practice the standards set forth in the act as affirmed by Congress and interpreted by the Supreme Court without the necessity of awaiting a promulgation of a minimum wage by the Secretary of Labor.

“The TVA, which purchased something more than eight million tons of coal in fiscal 1954, has done so at starvation prices. They have used the vast influence of their heavy purchases to beat down small isolated producing units to a starvation wage, ignoring safety standards and health conditions, taxes, compensation obligations, etc., and after having established such standards, based on starvation, they have asked the stable investment of the

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industry, operating modern mines under standard conditions with collective bargaining in the American way, to meet the intolerable and unjustifiable prices in order that TVA, a government agency, presumably bound by the law as well as every other natural citizen and artificial citizen, might make a better showing on its financial records, in competition with free enterprise industries producing electrical power in the United States.

881 "That agency has ignored every humane consideration, every standard of ethics, and the provisions of every paragraph of the Walsh-Healey statute in carrying out its push-cart policy of providing itself with coal. They seek to turn the economic structure of the United States back to the push-cart days.'"

Mr. Combs: May it please the Court, I would like to comment on the paragraphs that counsel read. From the Journal he read from an article that was written by Justin McCarthy and Rex Lauck. They were writing the article. On the same page, on the left-hand corner of the same Journal is Lewis' statement to the secretary, which is the official statement. What counsel was reading was a narrative on the part of the editor and the assistant editor of the Journal. Just for explanation, your Honor.

Mr. Rowntree: Is he not quoting Mr. Lewis?

Mr. Combs: No, he is not quoting Mr. Lewis, unless it shows he is quoting Mr. Lewis.

Mr. Combs: That is what I mean. If there are quotation marks, which counsel has not stated that there were, it would be explanatory itself. I would not know.

882 Mr. Rowntree: If counsel will look at the exhibit.

Mr. Combs: As a matter of fact, your Honor, I don't want to slow counsel up in that. As a matter of fact, the very sentence he read was not a quotation. It is an article by the editors of the Journal. Now there do appear to be quotes in the second part of the part that he read, the second part that he read is in quotes, and we will stipulate that. The second three paragraphs that he read are in

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quotes, purporting to quote from Mr. Lewis' statement to the hearing officer.

883 (The reading of the deposition was continued.)

"Mr. Lewis, do you recall that the Secretary of Labor made a speech at the 1956 Convention of the Union?

"A. I recall that he was there and addressed the Convention, yes.

"Q. Do you recall that you introduced him? "A. Yes."

Mr. Rowntree: We read from the introduction and portions of the speech on pages 546 and 549 of the 1956 convention minutes.

The Court: Who did you say made the speech?

Mr. Rowntree: James P. Mitchell, Secretary of Labor, introduced by President Lewis.

Mr. Kramer: Of course, your Honor, it is the same type, not the same thing, that we have been objecting to of the statement of somebody else. However, this goes further, your Honor, because the statement we heretofore objected to in the main, maybe not all of it, I recall, were representatives of alleged conspirators. Here they are seeking to introduce from the Journal the statement of a person not a party to the litigation at all, a governmental official, the Secretary of Labor. From the minutes, not the Journal. I said the Journal. I mean from the minutes of the international convention.

884 They are seeking to introduce from the minutes of the international convention a speech made by a governmental official, the Secretary of Labor.

We do not think under any rule of evidence this could be admitted, an outside party, not alleged to be a conspirator. Therefore, it goes beyond the rule.

Here is a public official that happens to be at the convention, makes an address, and they seek to put in what this official of the government may have said. The fact that he made it at the convention makes no difference.

The Court: I assume that you want to put that talk of

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the Secretary of Labor in for limited purposes. If so, what are such purposes?

Mr. Rowntree: The purpose, your Honor, is to put in a statement made at an official convocation of the cross defendant in the presence of the international officers of the cross defendant, contained in the minutes of the cross defendant, a statement of one who says that he worked with the cross defendant to accomplish certain things for certain purposes.

Mr. Kramer: May I answer, your Honor?

885 The fact that a person who is not a party to an alleged conspiracy may have said certain things or done certain actions which are not a part of the conspiracy as claimed, would not be claimed. The rule never, that I know of, as far as I know, never goes beyond the introduction of hearsay testimony, except to the extent, and that is what this is, except to the extent that one is alleged to be a conspirator. Now to the extent that one is averred to be a co-conspirator, though not named in the suit pending, has made statements under certain conditions, those statements are admissible, but here is a third party or fourth party, whatever he may be, wholly outside of any claimed conspiracy at all.

They don't claim the Secretary of Labor was part of the conspiracy. It might just as well have been somebody else, and it is pure hearsay testimony, your Honor, and the rule with reference to statements of conspirators is only a variation or exception to the hearsay rule, as your Honor well realizes.

They are seeking to go beyond that exception to the hearsay rule and say that some outside person—suppose the mayor of Knoxville had been at that convention and made a speech, or the mayor of Cincinnati, where ever this convention was held, and in a welcoming address made some statement. Certainly counsel can't claim that was competent.

886 Here is the Secretary of Labor, a governmental

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official, outside the bounds of the conspiracy, and how it is possible to get this within the exception of the hearsay rule, I fail to see, and we object to it most seriously, your Honor.

887 The fact that he says that he did something for a purpose, he's not a conspirator.

Mr. Rowntree: He did it.

The Court: What is the other fact that you propose to show by this alleged statement, Mr. Rowntree?

Mr. Rowntree: They show here why he, together with the union, working with the union, put in the minimum wage under Walsh-Healey, in the bituminous coal industry. It shows a restraint of trade purpose, and we have not attempted to allege or charge every person that can conceivably be a conspirator in this case.

Any person who is a conspirator, regardless of whether he is in the lawsuit or not, can make a statement in the presence of the defendant, and that is to be judged on its own merits as to whether he is a conspirator.

We don't want to have to charge him with being a conspirator, but the very statement here would indicate that this is admissible, I believe.

Mr. Rayson: May it please the Court, the Secretary of Labor was stating his connection with the enforcement of a law, the Walsh-Healey Act, the law which is unquestionably a constitutional enactment, constitutionally applied in this case. He is talking about an action
888 which he took which was lawful in a general sense, and which was found to be lawful in litigation that went to the Court of Appeals, which he took.

He may have expressed action which he lawfully took, but would not, it seems to us, be competent for any purpose in this case.

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Mr. Rayson: My remarks are not as to the admissibility under the technical rules of evidence. I am talking about

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its probity value. It has none, because here is a governmental official talking about an act which he had the right to do and the duties—

Mr. Rayson: Of course, the Secretary of Labor was not speaking in the technical terms of the statute, but in the terms of the spirit of the statute which he lawfully undertook to enforce.

The Court: Is there any dispute about what the Secretary did and what the coal operators did with respect to these?

Mr. Kramer: No, may it please the Court, the coal operators and the United Mine Workers of America, under the provisions of the Taft-Hartley—Walsh-Healey Act, pardon me—appeared before the Secretary of Labor, or his representatives, as has been said here, and asked for a determination by him of the prevailing wage for the miner of coal in the various areas in the United States in which coal is mined, and as a result of that joint appearance before the Secretary of Labor and his representative, he came up with the findings which have been passed to the jury.

Now that is all there is to it. He did that. We appeared—the United Mine Workers, not the Trustees—United Mine Workers; representatives of certain coal companies appeared and under the spirit of the Noerr case, we had the right. They can't claim fraudulent misrepresentation under the facts placed before him and under the authority vested in him by the statute, the Walsh-Healey Act, he comes up with an answer, and now they say because we did that, we were conspiring, entering into a conspiracy.

There's no dispute that those are the facts. That is exactly what happened. Now they are seeking to

The Court: Do I understand from what you are saying that following the appearance of the UMW and some of the coal operators before the Secretary of Labor, the

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Secretary of Labor fixed the minimum prices which the TVA was to pay for coal? Is that it?

Mr. Kramer: I don't mean price. It had nothing to do with the price of coal except incidentally, but he fixed the amount of wages as a minimum which any person selling coal to the—

The Court: Fixed the wages instead of the prices.

That they would be paid by any operator if he sold coal to the TVA or any other governmental agency?

Mr. Kramer: Correct, Your Honor.

The Court: Then if that is what was done, Mr. Rowntree, why do you want to talk about it any more?

891 The Court: Members of the jury, what the Secretary of Labor said in this speech would not be binding upon the UMW unless the UMW ratified and confirmed and acquiesced in what the Secretary of Labor said.

892 Now the Secretary of Labor couldn't say anything that would prejudice the rights of the UMW on an occasion of this kind unless the UMW authorized him to say it, or unless the UMW approved what he said, or ratified what he said, or acquiesced in what he said.

Now with those explanations and those restrictions, the Court will permit him to read what was said.

Mr. Rowntree: On page 546, President Lewis, in speaking about the office of the Secretary of Labor:

"Since that time there have been a number of occupants of that high office, and your union and its representatives from time to time through the years have had occasion to deal with the Department of Labor on many of the important considerations that affect the mining industry and the welfare of this Union and its members. None of them have been more considerate of this union and its policies. None of them have interfered less, and none of them have been more cooperative with this organization, within the limi-

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tations of his office and the statutes that regulate the actions of that particular department of Government than the present occupant, the Honorable James P. Mitchell."

893 The Secretary starts at the bottom of page 447:

"I have had occasion, as Mr. Lewis has indicated, to work with your organization in the Department of Labor on many fronts. I would like to tell you about some of the things that we have endeavored to do, as Mr. Lewis so aptly expresses it, within the limitations of our authority and responsibility and I would like to tell you also about some of the things that we would like to see done. As you know, ab the things that we would like to see done. As you know, about a year ago the Secretary of Labor, for the first time in history, found a minimum wage in the coal industry which controlled the wages that were to be paid to workers who worked on government contracts. We purposely sought that determination in order to exclude from government bidding those non-union mines which are a detriment to the industry. And I think by and large we have succeeded, except for certain areas of government purchasing which still have to be, shall I say, investigated.

"Twenty-five per cent, at the moment, of the TVA purchases are made under contracts less than \$10,000, which excepts such purchases from the determination of
894 the Walsh-Healey Act.

"I have set in motion a study of the TVA purchasing policy to see if there is any evasion of the Walsh-Healey determination on the part of TVA. I don't know whether there is or not. But, if there is, you can be sure that we will correct it."

The paragraph in the middle of 549, the third sentence:
"I believe it is my duty and my function to see to it that the laws which the Department of Labor is charged with administering are administered rigidly, inflexibly and without favor to anyone. We have administered those laws on that basis in the past three and a half years, resulting in the collection of back wages for workers of some seven and a

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half million dollars from violators of either the Fair Labor Standards Act or the Walsh-Healey Act. I propose to continue this enforcement policy, because I believe it is in the interest not only of the worker but is in the interest of the fair employer to prevent the chiseling, non-union employer from competing in the market place with fair employers who hire union labor."

Mr. Lewis states at the end of this speech:

"I am sure that the Chair voices the sentiments in the mind of every delegate in expressing our appreciation of the address by the distinguished Secretary of Labor. His personal assurance of his intention to fairly treat the men of the coal industry is bulwarked and borne out by his attitude in the entire period of three and a half years of his incumbency of that office."

Mr. Combs: May it please the Court, without waiving our objections to the introduction of this evidence, I think that probably if I read a few excerpts at this time with the Court's permission, this might be more clear.

The Court: All right.

Mr. Combs: In the first place, the Secretary was addressing the convention. It was an open, public convention that was attended by all the newspapers and any person of the public could attend these meetings.

Mr. Lewis introduced Mr. Mitchell, as stated here, by counsel, but counsel only read part of the introduction, and it is short. I would like to read the part of the introduction that Mr. Lewis made that counsel did not read.

It starts out:

896 Starting out with President Lewis:

"The United Mine Workers, over a period of many years, was one of the organizations that petitioned the Congress to create a new Cabinet position, a department to be known as the Department of Labor. Congress finally enacted that legislation, and the first Secretary of Labor in the history of the United States, a member of the Cabinet, was the Honorable William B. Wilson, former Secretary-

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Treasurer of the International Union, United Mine Workers of America, a Member of Congress, one of the founders and officers of this Union who served with distinction in that capacity during the Administration of President Woodrow Wilson."

And the next paragraph counsel read. Mr. Lewis continuing:

"He is here this afternoon—speaking of Mitchell—"to deliver an address to our Convention. He is a man of honor and integrity, high character, and with motives and ambitions to be constructive in all things as relating to the American economy. I am particularly proud this afternoon that he accepted the invitation to attend the Convention and extend his felicitations and greetings to the delegates, together with such other statements as he may feel
897 necessary to make. I am honored to be able to present to the Convention at this time Honorable James P. Mitchell, Secretary of Labor of the United States."

I would like to read from Mr. Mitchell's address, this part. It is very short. This is Mitchell in his address.

"We have had discussions in government on this whole problem of national resources, and always in those discussions coal emerges as one of our basic resources. And when I say that we found a Walsh-Healey minimum determination for the purpose of excluding from government competition of the non-union mines, we were doing that not only for the benefit of the worker, not only for the benefit of the fair employer, but also for the benefit of our national security, for this reason: that so long as these strip mines and non-union mines which pay people a miserly wage exist and deprive union-operated mines of business, you are thereby reducing your strategic potential in time of emergency. So, it is our job as government officials to see to it that the potential production is kept at the highest possible level.

"We all know that in time of emergency when high
898 wages are paid in shipyards and in other activities, those people who work in these non-union mines will

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disappear from the scene and the production of those mines will therefore disappear. So, in the national interest, as government officials, it is necessary for us to see that those operations which can produce coal, quickly and efficiently are kept alive to the extent possible by government purchasing in peace time. And we intend to continue that policy.

"I approach this subject with some fear and trepidation. But, I am going to have my say on it. I understand this morning that your President made mention of seizures, Taft-Hartley injunction, and all the other dire things that have occurred in the past. And I want to tell this convention and your President that so far as I am concerned and so far as President Eisenhower is concerned, we believe that the government does not belong on either side of the bargaining table."

Thank you, your Honor.

Mr. Rowntree: We will file as the next exhibit the UMW Journal of July 15, 1954, page 13.

(Exhibit No. 43 was marked for identification and filed.)

899 Mr. Rowntree: This is an article in the lower left-hand corner. "Labor Department Steps Up Enforcement Drive Against TVA Coal Chiselers on Safety."

Mr. Kramer: What is the date of this Journal?

Mr. Rowntree: This is July 15, 1954.

"Secretary Mitchell announced the Labor Department has started 'a full-scale campaign' to enforce safety regulations in small coal mines supplying the Tennessee Valley Authority.

"Mitchell said he and Labor Department solicitor Stuart Rothman already have brought safety violation charges against eight small Tennessee mines and are considering action against 90 more.

"The safety enforcement drive apparently grew out of protests from some larger union-organized coal mine owners and from the United Mine Workers."

Mr. Kramer: Of course, your Honor, we continue our

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objection. It should be specific to this and I make it specific to this in order to be able to make a motion to strike.

We are entering a different field, and we are talking about the field of safety, where before we have been talking about the field of prevailing wage. And we continue our objection—certain statutes of the United States are enforced by the Secretary of Labor and the solicitor of his department.

The Court: Overruled.

Mr. Combs: May I point out, may it please the Court, that the section read by counsel was read from a press release from the Department of Labor and it appears in the Mine Workers Journal without comment. It is just simply the press release.

Mr. Rowntree: Yes.

Mr. Combs: Coming from the Secretary of Labor.

Mr. Rowntree: If it is agreeable with counsel, we will skip to bottom of page 266, referring to United Mine Workers Journal of February 15, 1958, pages 5 and 6.

(Exhibit No. 44 was marked for identification and filed.)

Mr. Rowntree: We have excerpts from this last exhibit, your Honor.

Mr. Kramer: We have our objection that we have made heretofore which we are continuing, as your Honor understands.

The Court: All right.

Mr. Rowntree: This is an article headed, "Labor Department Holds Walsh-Healey Hearing." This is in 1958, and I might say, this is a second hearing on this question.

"The UMWA, Pittsburgh Consolidation Coal Co. and other coal producing companies made their formal plea to the U. S. Department of Labor for increased minimum wages in the bituminous coal industry under provisions of the Walsh-Healey Act. That Act requires that coal operators selling to agencies of the U. S. Government under contracts in excess of \$10,000 must pay prescribed minimum

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wages laid down by the Labor Department for the geographical area in which their mines are located.

"The UMWA and the operators stated their case at a hearing on February 3-5 presided over by Hearing Examiner Clifford Grant, the same man who heard an earlier case which resulted in a minimum wage determination by Secretary of Labor James P. Mitchell in 1955.

"The hearing was scheduled as a result of a petition late last year in which the union and the operators asked that the minimum wages be redetermined to take into
902 account the two wage increases negotiated by the UMWA since Mitchell's 1955 determination. Each of the two National Bituminous Coal Wage Agreements signed in 1955 and 1956 called for pay boosts of \$2 a day—a total of \$4 a day, or 50 cents an hour.

"Spokesman for the UMWA—and the man who presented the weightiest evidence in the case— was W. A. (Tony) Boyle, International Board Member for District 27 and special assistant to President John L. Lewis."

On the righthand column, the fourth paragraph.

"Chief witness for the Unionized coal industry" was George A. Lamb, manager of business surveys, Pittsburgh Consolidation Coal Co. He was quizzed on direct examination by Frank R. Amos, retired general counsel of Pitt Consol, who represented Pitt Consol during the 1955 wage determination, both in the Labor Department and in its long haul through Federal Courts, and acted as the chief legal spokesman for the operators.

"Lamb, who was also a key witness in 1955, backed up Boyle's testimony. He also stated that in 1957 his company produced about 40 million tons of coal, of which only 310,
903 000 tons were sold directly to the Federal government. He blamed this on the wage advantage of at least 50 cents an hour enjoyed by non-union operators and added: 'The greater part of the bituminous coal industry will be damaged' if the higher prevailing wages are not put into effect."

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Skipping one paragraph.

"Among the other operators witnesses who favored the increased wage rates was Frank J. Foresman, director of industrial relations, Pittsburgh and Midway Coal Mining Co. (Kans.), who preceded UMWA Safety Director Charles Ferguson as head of the Coal Mines Section of the National Safety Council."

Down to the last line, last paragraph, beginning at the bottom.

"Another operator witness was G. M. Davidson of Island Creek Coal Co."

That is all we care to read from that.

Mr. Combs: If the Court please, what counsel was reading was a descriptive article appearing in the Journal of the hearing. In addition to the named operators, this article shows that there were several more operators appearing in favor of the amendment to the prevailing wage.

It also shows that at least two persons appeared in 904 opposition to the order. It was a narrative of the hearing that was held by the Secretary.

The Court: Yes, sir.

Mr. Rowntree: We refer to UMWA Journal of October 1, 1958, page 11, and I will simply read the first paragraph.

Mr. Kramer: Just a moment please.

Mr. Rowntree: Under an article headed "Walsh-Healey Prevailing Wage Raised 50 Cents an Hour by Mitchell."

"Secretary of Labor James P. Mitchell on September 22 issued an amended determination under the Walsh-Healey Public Contracts Act, which finds that the minimum wages prevailing in the bituminous coal industry have increased by 50 cents an hour in virtually all of the Nation's coal producing districts."

Mr. Combs: May it please the Court, this again was a descriptive article appearing in the Journal, and goes ahead and describes the authority of the Secretary under the Walsh-Healey Act.

And I might point out, I think it would be correct to point

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out this, that under the provisions of the Walsh-Healey Act, that these orders that are made by the Secretary
905 are first published in the Federal Register with its title as a proposed order, and it gives any person anywhere that receives that register a right to protest the order, to ask for a modification, or what not.

906 And I would like to say that in each of these instances that we are talking about, that that was adhered to by the secretary, so that everybody in the coal industry or any interested party, before these orders became effective, had at least 20 days under the law to protest or to modify those orders.

I want to say that it is not limited to people who receive the Federal Register. As the Court knows, the Federal Register is a governmental document where all the governmental departments are required to publish their orders or findings. That is for the general public's knowledge, in order that they may have any right that they may want to about any government agency's publication or board, that they may have a right to object to it. It is not limited to the one who receives it.

* * * * *

(The reading of the deposition was continued.)

By Mr. Rowntree:

"Q. Well, you were aware, were you not, that there was a \$10,000 provision in the Walsh-Healey Act— "A. Yes.

"Q. —which specified the contracts costing less than \$10,000 would not come under the minimum wage re-
907 quirement? "A. Yes."

Mr. Rowntree: We refer here to the 1956 minutes, page 13, in the middle of the paragraph.

Mr. Kramer: Now, your Honor, before the reading of this, may I state that in none of these wage determinations were the trustees in anywise involved, the trustees of the Welfare Fund. They were not present, did not participate, and they did not receive any more royalty as a result of these determinations.

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The Court: None of this evidence then will be considered in relation to the trustees' phase of the case that is involved in this litigation.

None of these statements are binding on the trustees; none of these statements shall be construed as prejudicial to the rights of the trustees.

Mr. Kramer: And dealt only with hourly wages, your Honor.

The Court: All right.

908 Mr. Rowntree: This is a statement by President Lewis at this convention:

"You will recall that our organization and certain coal companies petitioned the Secretary of Labor to establish a minimum wage scale in our industry. And after a year of testimony and examination and so forth the Department of Labor did promulgate that scale and fixed the scale at whatever the contract rate is in that district. That is the minimum wage in the coal industry. The Tennessee Valley Authority gets around that law now, to which they are obligated to adhere, because they are a government agency operating under a government name, by finding a clause that says that the minimum rate schedules do not apply to contracts for less than \$10,000 in amount. So, wherever they can find a non-union operator willing to sell his coal for less than the organized mines under agreement, they will call him in and they will give him as much as five, six, seven or ten \$1,000 contracts in one, two or three days—a

909 clear evasion of the law, a clear conspiracy to evade the law on the part of a governmental agency. Yet up to this time this agency has not been told, either by the Congress or the executive, to follow the proclaimed public policy of the United States and buy coal from mines that pay the industry wage and from operators who invest their money under the free enterprise system and expect to have a return on their investment. It is anti-social, it is

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un-American. It is contemptible double-dealing on the part of the Tennessee Valley Authority."

(The reading of the deposition was continued.)

"Q. With reference to that paragraph, Mr. Lewis, did the Union make any effort to change the policy of TVA with respect to purchasing coal on these contracts for less than \$10,000? "A. It is possible that in some of the conferences as held by representatives of the Union that question may have been raised and a viewpoint expressed on that. I have no personal knowledge.

"Q. Do you recall if Mr. Widman attended any such conferences? "A. He attended various meetings with the TVA executives.

"Q. Mr. Lewis, the Union has attempted, has it not, to sell the membership on the idea of mechanization in the bituminous coal industry? "A. I think not. I think the Union has not undertaken to 'sell' the membership anything. I dislike that Madison Avenue term in all its aspects.

"The Union officers have reported from time to time to the membership on the question of mechanization and it has been policy for many years not to oppose mechanization but to demand from the industry a participation in the advantages of mechanization.

"We hold that God did not put in the mind of a genius an idea to increase production per man day for the sole benefit of some coal operators or a group of coal operators; that the advantages inherent in the progress of this economy should be on a basis where all interests concerned have a participation in the advantages.

"We hold also, in the Tennessee Valley Authority matter, that Congress did a disservice to that percentage of citizenship who are denied the protection of the Federal Safety Act because they were employed in mines having less than fifteen employees; and we hold that the citizens, before the law, however engaged or employed or occupied, are entitled to equality of protection under the law.

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"We hold also that the \$10,000 exclusion arrangement to which you refer, in contracts, made it possible for a purveyor of substandard coal to pyramid his \$10,000
911 contracts and render abortive the Act of Congress as appertaining to that volume of tonnage.

"We held it was wrong and that redress should be given; and that the Tennessee Valley should carry out the intent of Congress in passing the Act.

"Q. Would not the elimination of that policy of TVA with respect to these small contracts bar the small coal operator from participating in the Tennessee Valley market, he having previously been barred by the minimum wage in the bituminous coal industry from selling on the larger term contracts? "A. Not necessarily. It would depend on the individual circumstances attendant upon his mining problems and his marketing problems.

"Be it known and recognized that, under the current agreement in the industry, there are thousands of unit signatories in this category of small mines who are paying the wages and fulfilling the contract in every particular, and maintaining proper safety standards.

"The question of why those who don't do it do not do likewise is something upon which I have no knowledge.

"It is my own concept and my own opinion that the fact that a mine is small does not necessarily, under efficient management, always bar that mine from paying only a substandard price or maintaining some substandard con-
912 ditions in the mine."

Mr. Rowntree: We offer as the next exhibit United Mine Workers Journal, December 1, 1958, page 7.

(Exhibit No. 45 was marked for identification and filed.)

Mr. Rowntree: This has a picture on it with the legend under the picture: "Big Paul—This is 'Big Paul, the King of Spades,' now working at the Peabody Coal Co.'s new River King Mine near Freeburg, Ill. It is believed to be the largest stripping shovel in the world. Big Paul's dipper can be filled with 105 tons of overburden (enough to fill

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two railroad ears), transport the load about a city block away and dump it on a bank almost 100 feet high. Big Paul is operated by one man, who rises to his third-floor operating cab by electric elevator. It is about 100 times the size of an ordinary power shovel. It uses more than half a mile of wire rope in operation. It could fill a freight train 175 miles long in one month. It has as much horsepower as the largest ocean freighter and uses as much electricity (coal-by-wire) as the homes and industries in a town of 10,000 persons. Big Paul can fill its dipper up a bank as high as a 12-story building and dump it on top of a bank the height of a 10-story building a city block away. It is the first of three such shovels to be used by Peabody. It is a symbol of the dynamic technological progress of the American coal industry."

Mr. Combs: Your Honor, we object to the introduction of this on the ground that it has no possible relevancy to this case here, a picture of a steam shovel or electric shovel.

Mr. Rowntree: We are showing the competitive advantages of the alleged conspirators to pay wages under the repeated increases of the National Bituminous Coal Wage Agreement and the Walsh-Healey determination. This article says that one man can fill 175 miles of railroad cars in one month. These repeated increases of wages we say were tailored to meet the ability of Peabody Coal Company, among others, to pay these wages without having it affect them but a very small amount, in comparison with their increased production.

Mr. Combs: Your Honor, I fail to see how that it can show, by showing the picture of one big shovel, that the operators are able to operate and mine coal cheaper than other operators and how many of them there are. I think it just depicts a big shovel and that is a picture of it, and it says what it can do.

I don't think there is any question about what the picture describes. What bearing that could have on this case, I fail to see, and we object to it.

Mr. Rowntree: We have to show these competitive advantages in order to prove our theory in which these wage increases were tailored to the ability of these big companies, not to effect their profits but to effect the profits of the small producers that can't do these things, and we have to start somewhere in proving this and this is where we start.

Mr. Combs: I would assume that it would be self-evident that if they are going to show a competitive advantage, the evidence would show they have to pay for such and the cost would eventually pay for it. I don't know whether it would.

I am talking about the intrinsic value of evidence of this character.

The Court: I will let it go into the record.

Mr. Rowntree: We put in as our next exhibit United Mine Workers Journal, November 1, 1959, pages one and three.

(Exhibit No. 46 was marked for identification and filed.)

Mr. Rowntree: I believe that page 18 is also in that exhibit.

Mr. Kramer: Your Honor, the main part of this exhibit is the same thing that was put in just a minute ago
915 and we continue the same objection. It is a picture of another large machine.

The Court: Same ruling.

Mr. Kramer: That is the main part of this exhibit.

Mr. Rowntree: That is right.

This is an article, "Coal's Present and Future Look." Reading the left-hand column—this also has a picture on page three here of one of these continuous mining machines that is spoken of in this record several times.

916 "Mining bituminous coal in the northern West Virginia fields—in the rich Pittsburgh Seam to be more specific—is 'like taking candy from a baby.' Both are comparatively effortless.

"That was the simple analogy to be drawn following a personal visit to one of the world's most modern coal pro-

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duction facilities—the twenty million dollar Loveridge Mine and Preparation Plant of the Mountaineer Coal Company, a division of Consolidation Coal Company, located near here.

“The extraction with ease of one of this nation’s vital minerals has been achieved through the adaptation of technological advances by Consol in the ever-expanding program of modernization at a cost of close to two hundred million dollars since 1947.”

Mr. Combs: That word “its”. You said “in the”. I think it would make a difference.

Mr. Kramer: Perhaps I ought to point out, Your Honor, one thing: This machine he is now talking about isn’t used in our area at all by anybody who was in any wise a competitor with the present plaintiffs here. This is in the Pittsburgh field, entirely removed from this location and has nothing to do with this location.

917 The Court: Well, I thought the word “Consolidated Coal” was mentioned.

Mr. Kramer: Consolidated Coal Company was mentioned, Your Honor. It is averred to be a conspirator, but Your Honor, Consolidated Coal does not operate in this area, and is not a competitor of Phillips Brothers.

Mr. Rowntree: Consolidation Coal Company does operate in this area.

Mr. Kramer: But this machine was not used in this area or involved in this area.

Mr. Rowntree: We say on that, Your Honor, we state the contention that they do have—that they did come into this area along about 1955, when they set their eyes upon TVA, and they established two mines in close proximity to the Kingston Plant.

We do—

Mr. Kramer: You can’t contend that they use any machines like this in this area?

Mr. Rowntree: No, we don’t we say machines like this, it’s impossible to use in this area. We don’t know why

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they established two mines in this area, except that they began to sell to the TVA at about the time the Kingston Plant fully developed.

918 This is part of our case, Your Honor, that these machines cannot be used in this area, but that—

The Court: Well, I'll let you put it in the record, but there's nothing wrong, members of the jury, with bigness of business; if that is as far as it goes, it has no probative value in this case.

There is nothing wrong with a company buying big shovels and bulldozers, and things of that kind in the operation of a coal business, and these things standing along have no significance insofar as the anti-trust laws are involved.

Now I say these things that he is talking about that is mechanical operations of so-called large coal companies in and of themselves, have no significance with respect to the anti-trust laws. Again I call attention to the jury that before there can be any liability on the part of anybody there must appear to the jury from a preponderance of the evidence in this case that there was an agreement between the UMW, the Trustees, and one or more of these coal companies named in this alleged conspiracy to restrain trade in interstate commerce in this bituminous coal industry for the purpose of driving the little coal operators out of business, or an agreement between these alleged
919 parties to monopolize this bituminous coal industry in interstate commerce in this area, for the purpose of driving out the little operators in order that the big operators might take their place, or there must appear to have been an agreement between these alleged parties to attempt to monopolize this bituminous coal industry in this area in interstate commerce for the purpose of driving these little coal operators out of business including this cross-plaintiff, the Phillips Brothers Coal Company. That as a direct and proximate result of these alleged unlawful agree-

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ments, that the Phillips Brothers Coal Company sustained damages.

Now those are the problems; and let's not get our mind off of the real problems that are involved in these lawsuits, and I don't want the jury to allow their minds to be prejudiced in any respect against any of these so-called coal companies because they had modern equipment, large equipment, or the last in the art in the operation, or the highest in the art in the operation of mechanical mines.

Now, gentlemen, with those observations; those are the rules of the Court on this evidence.

Mr. Rowntree: May I state a contention, maybe, to clarify the purposes of this?

920 The Court: Yes.

Mr. Rowntree: I feel that I get lost sometimes. It is really an intricate thing I am trying to do here, and sometimes—

The Court: I read your brief again last night, partially. I understand what you are undertaking to do, but you can't do it by showing bigness alone.

Mr. Rowntree: No, that's right.

The Court: Or by showing modern equipment alone.

Mr. Rowntree: Of course.

The Court: By showing that certain ones have developed the art, developed the art of coal mining—

Mr. Rowntree: No, that's true.

○ The Court: —to its highest stage, highest present stage. You can't do it by those things. The only way it can be done is to show an unlawful agreement upon the part of these so-called large operators, and the UMW, and the Trustees, to harm some other person including this particular plaintiff. That is the basic issue.

Mr. Rowntree: Yes, sir.

The Court: In this lawsuit, but I will let you state your theory, and I will let Mr. Kramer or Mr. Combs or Mr. Rayson state their theory, if they desire to do so,

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921 again in reply to what you say on this particular point.

The only reason I am interrupting this trial is because there have been renewed objections from time to time, and I want all of these parties to know the basis of the Court's ruling on those objections.

Mr. Combs: Your Honor, we have no desire to go into it any further at this time, but if we do, I think it should be out of the presence of the jury.

Mr. Rowntree: There apparently is a misunderstanding as to why this is offered, and we want to show how it ties into our theory.

The Court: Now, you have a right to show why it is offered in accordance with the policy of the Court, throughout this case, and the other side may have a right to reply to that explanation of yours if it so desires.

Mr. Combs: I think we know what he is driving at. We think he is wrong, and we object to it. That is what it boils down to.

Mr. Rowntree: I am not sure that the jury does or the Court, what I am driving at.

Mr. Combs: I don't think it is appropriate to tell the jury as it goes in that way unless it is just for the purposes of clarification.

922 The Court: It is for the purpose of clarification.

Mr. Combs: That is all. We can't editorialize on it, what it ought to be. I don't think that is right.

Mr. Rowntree: Well if Your Honor please, this conspiracy that we have alleged in this case, we say goes back to 1950, and we say that at that time there was an understanding reached, after this struggle between the big companies and the union, that there was an understanding reached between the major coal companies and the union as to how this overproduction problem was to be taken care of, and we say that this National Bituminous Coal Wage Agreement, this uniform agreement that applied in its terms to everybody alike, was to be used over the succeeding years

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as an instrument in knocking out part of the production of the country, the production of the small, "pallid, undernourished mines," as Mr. Lewis called them, and these smaller mines could not pay increases in wage. They used manpower.

On the other hand, the major coal companies were able to make rapid and tremendous advances in mechanization, the type of mechanization we are talking about here. They could afford to pay these wage increases without it
923 taking hardly a dime out of their pocketbooks, in comparison with what the small companies had to pay.

The Court: And these so-called large shovels—

Mr. Rowntree: Yes, sir.

The Court: —and like testimony is introduced purely and solely as bearing on the ability—

Mr. Rowntree: That's right.

The Court: —of certain companies to have and to use and to hold—using real estate law—large mechanical equipment in the operation of coal.

Mr. Rowntree: That's correct, Your Honor, and to show the ease with which they could pay these wage increases.

The Court: I think I understand. Now, Mr. Combs, if you want to answer.

Mr. Combs: Just this much for clarification.

The Court: Yes, sir.

Mr. Combs: I think it is the position as stated by the United Mine Workers that the evidence and the law
924 shows that they had nothing to do with the type of mining an operator wanted to engage in.

Now if he wanted to mechanize his mines, or if he didn't want to mechanize his mines, they had nothing to do with that legally or factually. The evidence will show that. I think we overlook that, just as a comment, they have shown that one of their operators that they put on the witness stand is very highly mechanized.

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The Court: All right.

Mr. Rowntree: "Mining bituminous coal in the northern West Virginia fields—in the rich Pittsburgh Seam to be more specific—is 'like taking candy from a baby.' Both are comparatively effortless.

"That was the simple analogy to be drawn following a personal visit to one of the world's most modern coal production facilities—the twenty million dollar Loveridge Mine and Preparation Plant of the Mountaineer Coal Company, a division of Consolidation Coal Company, located 925 near here.

"The extraction with ease of one of this nation's vital minerals has been achieved through the adaptation of technological advances by Consol in its ever-expanding program of modernization at a cost of close to twenty million dollars since 1947.

"Development of the Loveridge Mine in a completely virgin coal area covering approximately twelve thousand acres of the Pittsburgh Seam will yield about ninety million tons of coal, assuring thirty years of production at the rate of three million tons annually. These figures are based on reserves presently allocated to Loveridge but which could be extended.

"Consol's over-all reserves in the northern part of this state cover six counties and total more than 1.3 billion tons of recoverable coal. These reserves alone assure an adequate supply for the next hundred years based on present-day production rates.

"In its vast network of operations, Consol operates thirty-three mines in five states—Pennsylvania, Ohio, Tennessee, Virginia and West Virginia—with twenty-one of the mines having a potential annual productive capacity 926 in excess of one million tons."

I can't read my copy. Skipping a paragraph.

"In the mining of the Pittsburgh Seam, which has been described as 'the most valuable mine deposit in the world,'

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Consol has developed complete mechanization of its underground facilities at its Loveridge Mine.

"Here, deep in the mountainous region of the state, all coal is mined by teams of trackless borer-type continuous mining machines. These machines are capable of advancing a face 13 feet wide and 7 feet high at the rate of 60 feet an hour.

"The productive capacity of one of these machines, operating under normal conditions in the Pittsburgh Seam, can reach 1000 tons per eight-hour shift, according to a spokesman of the company.

"While the continuous miner gouges and bites out the coal, tractor-mounted loading machine operate behind it and with gathering arms sweep up the coal and empty it by conveyor into 7-ton capacity shuttle cars.

"These shuttle cars, traveling at the rate of 350 feet per minute, deliver the raw coal to an extensible belt conveyor which pours it into 20-ton mine cars which transport it to the surface.

927 "While mining goes on underground at Loveridge, the company has the most up-to-the-minute ventilating system in operation at all times, for the protection of life and property."

Mr. Combs: Just a brief comment. The part that counsel was reading was taken from an article in the *Mine Workers Journal* by a *Journal* correspondent—written by a *Journal* correspondent, and its dateline is Fairview, West Virginia, and the article goes on for two pages. It describes mostly the coal mining operation at West Virginia by units of Consolidation Coal Company.

On the same page there is an article by George J. Curilla, Jr., *Journal* correspondent, with a dateline of Fairmont, West Virginia, and covers basically the same subject on the future of coal mining.

* * * * *

Mr. Rowntree: May it please the Court, and ladies and gentlemen of the jury, we offer as the next exhibit UMW

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Journal of December 1, 1959, pages 14 and 15.

928 Mr. Combs: We object to this. In the first place, it is after the filing of the complaint, dated after that.

In the second place, it is a speech or something made by the Pittston Company president, I don't think it is admissible until we find a conspiracy, in line with our previous objection.

The Court: Unless the jury finds from a preponderance of the evidence that there was a conspiracy and that the statement was made in furtherance of the conspiracy, you will not consider it for any purpose in this suit.

(Exhibit No. 47 was marked for identification and filed.)

Mr. Kramer: I guess your Honor noted the objection also as to date—subsequent to the institution of the suit and it is subsequent to the end of the alleged conspiracy.

The Court: It will have no bearing on the question of alleged damages in this case unless the conditions to which the statement refers existed during the period involved in this lawsuit; namely, February 14, 1954 until and including December 31, 1958; then you will not consider it for any purpose.

929 Mr. Rowntree: Some of the dates are mentioned in here as to what the conditions described pertain to, and there will be subsequent proof with respect to the company itself. I think the subject matter will show a condition existed at certain times and the jury can judge with respect to that.

The Court: During the period that is involved in this lawsuit?

Mr. Rowntree: That is right.

Mr. Rowntree: Statement of Joseph P. Routh, president of Pittston Company, in the third paragraph.

"In 1953 our coal division produced 50.3 percent of our net income, our trucking and warehousing division produced 19.9 percent, and our oil division 21.2 percent, the rest being in miscellaneous income. Our coal division percentage, of

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course, is off so far this year due to the steel strike, but nevertheless bituminous coal is our most important division and thus I will discuss this phase of our business first.

"Our coal division is made up of the following operating companies: Clinchfield Coal Company Division, Elk River Coal and Lumber Co., Amigo Smokeless Coal Co., 930 Lillybrook Coal Co.

"The Clinchfield Coal Co. Division, which is the most important, operates modern coal mines in Virginia, northern West Virginia and Tennessee. Our Clinchfield properties in southwest Virginia encompass the ownership of the mineral rights in approximately 300,000 acres with an estimated billion tons of coal reserves. This we believe to be the largest single block of coal under one ownership east of the Mississippi if not in the entire country."

Skipping one paragraph.

"I am sure that most of you have heard about our great new Moss No. 3 Mine, which was dedicated on November 18, 1958, and will be completed in the early part of 1960 at a cost of approximately \$50 million. This mine of tomorrow, when finished, we are confident will be the finest bituminous coal mine in the world. It will produce approximately 45 tons per man per day as against the average in this country of a little over 11 tons per man per day and 1.5 tons per man per day in Europe and also in Russia. Its cleaning plant resembles a huge factory and cleans, dries and sizes 25,000 tons of coal per day automatically with push-button controls. This plant, equipped with the most modern 931 automatic and electronic devices, compares with the great modern manufacturing plants of America. This mine is now running at approximately 60 percent of capacity due to delays in completion caused by the steel strike. However, it is already producing up to 30 tons per man per day, and its costs per ton are fully up to our expectations. Our Moss No. 3 Mine, when finished, will produce six million tons of coal annually, of which approximately 1.25 million tons are under long-term contract to the new utility plant

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of the American Electric Power Co. that has been built close by this mine."

Mr. Combs: If the Court please, as a matter of explanation, this is a re-print of part of the remarks made by Mr. George Routh. He is the chairman of the Board and president of Pittston Company.

These remarks were made before the New York Society of Security Analysts. It concerns the coal producing activities of the company, his remarks addressed to that, and he read excerpts from the remarks to these security analysts that covers two pages. Thank you.

Mr. Rowntree: On page 273.

(The reading of the deposition was continued.)

932 "Q. Mr. Lewis, do you recall that in 1959 the Landrum-Griffin Act was passed which required the filing of financial reports by Unions? "A. I, of course, have had knowledge of the presence of the Act of Congress.

"Q. And the United Mine Workers did file a report under that Act."

935 "Q. Now, Mr. Lewis, in dealing with the funds and the assets of the International Union, the International officers of the Union acted in a fiduciary capacity, did they not? "A. Depending on what interpretation you put on the word 'fiduciary'.

"Q. Did they not act in the nature of Trustees of the funds? "A. That's right.

"Q. Do you recall that many of these transactions involving the Union funds—the particular transactions with Mr. Coalton of the National Bank of Washington, and Mr. Cyrus Eaton—in each instance the notes which represented the transactions contained a provision that the individual to whom the funds were advanced could surrender the collateral which had been put up with the Union and relieve himself of personal liability for the balance due on that note? "A. That is right.

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"Q. Now, Mr. Lewis, don't you think that that was sort of a Heads-I-lose-Tails-you-win proposition? "A. No, sir.

"Q. Well, will you explain that?

936. "A. It was simply a commonsense arrangement and there was no desire on the part of the mine workers, of those gentlemen acting in the individual case, to load them with a possible liability at a time of personal stress to themselves when they would be compelled to take the loss because of the market price on those securities.

"The values of those securities are their intrinsic value; and the Trustees were perfectly well satisfied with their knowledge of the future value of those securities and were not concerned with fluctuations in the market price because there was no intent to make a profit on the securities by selling them. If it were so we could easily have profited because the stock advanced around forty on the market, for West Kentucky, after acquisition of these shares.

"Mr. Kramer: In the use of the word 'Trustees' as you have used it here, you are not using it with reference to the Welfare Fund at all.

"The Witness: Oh, no.

"Mr. Kramer: You are using it with reference to the United Mine Workers alone.

"The Witness: That is correct, sir.

937. By Mr. Rowntree:

"Q. Mr. Lewis, the rise of that West Kentucky stock to a price of 40, was that not immediately after the acquisition of that large block of shares? "A. I do not recall the exact period of time that elapsed before the rise came.

"Q. Did not that stock decline in value then down to a range of ten or twelve dollars per share? "A. On the market? Yes. But that is not the value of the stock in the minds of the Trustees, and we are not concerned with the market price at the current time.

938. "Q. Does not the value of the coal properties

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depend upon the ability to sell the coal? "A. Only the current value is all.

"Q. And the ultimate value would be dependent upon the ability in the future to take over the market, insuring the ability to sell the coal? "A. No, not in any sense of the word.

"Q. Is it not true that a buyer of coal lands and coal mining plants would be interested in the salability of the coal on those lands? Isn't that a major part of the analysis of value that a buyer would make? "A. You are asking me to define the intent and the purposes and opinions of people who invest in coal mines and whether or not they would not be concerned.

"There is no rule by which one can judge those things because much acreage of coal lands is purchased not for exploitation but to preserve the continuity of operations for that company in the future, the future value. The length of its life makes the investment more valuable.

"I can recall when the United States Steel Corporation had investments in coal lands that they did not expect to use in less than one hundred years. A hundred years more reserve supply of metallurgical coal.

939 "I do not know that they now have such outstanding reserves. Time has made changes.

"I know of operating coal companies now, and I know of railroads, and I know of land companies that have in their possession vast acreages of reserve coal lands that possibly will not be exploited or mined in the next fifty or seventy-five years.

"So the answer is no. It is not necessarily concerned with current practice or current salability of tonnage of coal.

"Q. But the future prospect of a market being available for the sale of coal would be a strong question on the value of those coal properties, would it not? "A. I wouldn't think so, necessarily; because no one buys coal lands or invests in the erection of mining units, under current conditions, solely with regard to the present price of coal in the

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market or the volume of demand. He is building for a long time, of necessity.

"I know a railroad that has over a half million acres of undeveloped coal lands that pays taxes on those lands year after year and charges them up to the gross cost of operating the railroad.

"There is no uniform method of conducting the business of the corporation.

"Q. Are these companies that you refer to interested in acquiring these great tracts of coal land because
940 the available coal lands in the country have become scarce? "A. Because what?

"Q. Because the available lands containing marketable coal have become rather scarce? "A. I wouldn't know on that, as an abstract question.

"Certainly the country has vast coal reserves. Coal is our most valuable national asset.

"When oil wells run dry and gas wells fail, there will still be coal, convertible into gas and convertible into oil, convertible into many other things. And I think that our shortage of coal, generally speaking—steam coal—would probably cover our requirements for two thousand years at the present rate of consumption.

"That is not true with regard to metallurgical coal. There is a limited acreage of that in the United States. It is being consumed faster and utilized more for coal.

"Much of our export coal is metallurgical coal."

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"But from a commercial, competitive standpoint
941 it costs too much. Progress may be made in the future. I think some experiments are taking place now. Dow Chemical is going to take a half million gallons a day on a project now out on the Gulf Coast, for which they will pay 30 cents a thousand gallons, while the domestic consumers in the cities affected will pay 20 cents.

"There is the element of cost, and each enterprise that

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needs water in large quantities makes the choice of what they will do.

“The same way with regard to metallurgical coal.

“We have the lignite reserves. We have the sub-bituminous reserves and the bituminous. The metallurgical. The high and low volatile. And we have semi-anthracite in the western areas and we have anthracite in Pennsylvania. Those are the gradations in the types of coal. Each has its purpose. Each is utilized according to the needs of the economy and the rules governing from the standpoint of cost in the operation of any business.

“Q. Mr. Lewis, has the United Mine Workers of America been satisfied with the management of West Kentucky Coal Company and Nashville Coal Company since the Union acquired stock in those companies? “A. I could not express that in the terms of being ‘satisfied’ or ‘dissatisfied’.

942 The United Mine Workers of America had nothing to do with the management of West Kentucky Coal Company. In no sense of the word. In the past or now. The same as with all other companies in the industry.

“We decline to assume the obligations of management; and the operators have always helped us in that declination and have proudly proclaimed that they owned the properties and would do as they pleased. And we have helped them to do that. Sometimes to their disadvantage.

“Q. But the Union has invested millions of dollars in those properties and has assumed the position of an owner or partial owner of those companies; is that not true?

“A. The Union holds some securities and investments in West Kentucky Coal Company; and like our investments—the Trustees of the United Mine Workers—in other units of American industry, we do not undertake to assume the responsibilities of management in any way.

“Our private opinions of the efficiency of this manager or that manager in the industry is independent and separate and apart and has nothing to do with the policy of the United Mine Workers.

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"Conceivably when one knows the record of an operating man in the industry in any company, one subconsciously forms an opinion as to his ability or his accomplishments; and those opinions are of no value to anybody and are not publicly uttered or privately uttered by representatives of the United Mine Workers because we have no reason to try to prejudice the position of any man in any position in industry. It is a commonsense policy.

"Q. The International officers of the Union, as Trustees of Union funds, would have an obligation to check upon and to pass upon and to take steps when need be, to preserve the assets in which they had invested Union funds; is that not true? "A. Sir, I have a full appreciation of the obligations of the Trustees acting in a fiduciary capacity.

"It has been my lot to be a Trustee in a number of instances. I have an understanding of the obligations placed upon fiduciary Trustees under the law and the statutes made and provided. And all those things are taken into consideration when the Trustees exercise their judgment.

"The Trustees of the United Mine Workers are satisfied with the investment in the West Kentucky Coal Company and are quite content in the belief that, in the end, it will prove to be immensely profitable to the United Mine Workers of America in a financial sense; a wise investment of the funds."

Mr. Rowntree: That concludes our part.

Mr. Kramer: Now I call on counsel, under Rule 24(d)4 to read the cross examination.

Mr. Rowntree: You want me to read it?

944 Mr. Kramer: That is what the rule says.

(The reading of the deposition was continued.)

"CROSS EXAMINATION

By Mr. Combs:

"Q. Mr. Lewis, counsel has asked whether or not the Union has been aided in its organizing drives by certain big operators. They have submitted for the record here

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certain excerpts from the Journal and different publications with reference to the acquisition of the Elk River Coal Company by the Pittston Company; the acquisition by the Peabody Coal Company of the St. Ellen and Millstadt Mines; and the purchase of certain stock by the United Mine Workers in West Kentucky.

"I ask you whether or not there was any understanding between you and any of these operators at any time or whether there was any concerted agreement that these companies would acquire these mines for the purpose of helping in these organizing drives? "A. No.

"Q. Now with reference to the question of the policy of the United Mine Workers over the years to demand equal pay for equal services and to secure a minimum uniform wage, I ask you whether or not—from your experience as at one time the president of the CIO for many years, and as an officer and official of the American Federation
945 of Labor for many years—whether or not this same policy or another policy exists in those labor organizations concerning a minimum wage for equal service?

"A. To my knowledge, practically every organization in the CIO and the American Federation of Labor, and in many so-called independent unions, were unanimous in their opinion on that subject and were proponents of the idea; and they sought its passage by Congress in every proper way. And I personally have testified at some length before committees of Congress, urging the enactment of the minimum wage law in the United States, which finally was enacted in the form of the Walsh-Healey Bill.

"So Congress enacted the law and, in the opinion of this witness, it is an absolute and unqualified right on the part of any citizen to avail himself of the protection and privilege of an Act passed by the Congress of the United States, which is what we undertook to do for the mining interests.

"Q. For the purposes of the record, Mr. Lewis, how long were you connected with the CIO, officially? "A. Two years of preparation antecedent to its formation; five years

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as president. I left it with five million members and a balanced budget for the preceding year.

"Q. Now did you hold certain official positions in the American Federation of Labor and how long? "A. 946 It varied at different times. I was one of the vice presidents of the American Federation of Labor and a member of the Executive Board.

"Q. And from your experience, based on this experience, you are familiar with the objectives of the labor movement in general on this uniform wage scale? "A. I so believe."

Mr. Rowntree: That concludes the deposition.

947 Mr. Rowntree: Interrogatory 63, of Set one, at page 21. This is addressed to the International Union, Your Honor.

"File a list of the property, stocks, bonds, cash and assets owned by the United Mine Workers of America, independent of any assets owned by the Welfare and Retirement Fund, together with the cost of each item listed."

"Answer: Following —

Mr. Kramer: Just a moment.

Your Honor, we object to this introduction of the interrogatory and its answer for the reason that it is wholly irrelevant and immaterial for any issue in this case.

The Court: Well, now, Mr. Kramer, I know that you are familiar with the rule of law that states that testimony going into the assets of a defendant charged with the violation of Section One of the Sherman Act is competent as bearing on the ability of such corporation or partnership or concern to monopolize part of an industry, 948 and I assume that that rule would be applicable in this case.

If not, why not?

I am sure it is applicable insofar as the private corporations are concerned, and if it should appear that the union was wrongfully dealing with these private corporations, or in violation of the anti-trust laws, wouldn't such testimony

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be competent for whatever bearing, if any, it may have on that question?

Mr. Kramer: To be frank with Your Honor, I know of no rule of law or rule of evidence that would change the applicability of what Your Honor states, because the United Mine Workers of America are a party defendant rather than some corporation being a party defendant.

But there is this proposition, Your Honor, that in the Clayton Act, we, the provision that exempts unions—

The Court: Exactly, under Section Six of the Clayton Act.

Mr. Kramer: Yes, Your Honor.

The Court: The union is exempted from the restrictions of the anti-trust laws provided it appears to the jury 949 that the activities in which the union was engaged was to promote the legitimate objectives of the union, namely to increase the wages of the employees, to better the working conditions and kindred matters that relate to employees.

Mr. Kramer: Now, Your Honor, we followed that with this provision, and therefore the accumulation of assets by the United Mine Workers does not indicate a violation of the anti-trust laws.

The Court: No, but might they not, if used wrongfully or in agreement with private business, indicate the ability of the union as well as private business to monopolize a certain industry?

For example, a little grocery store here in Knoxville with, say, five hundred dollars worth of merchandise couldn't monopolize any part of the grocery industry, and maybe the industry is so small that it couldn't, under any stretch of the imagination, monopolize any segment of the industry.

But the cases hold, Mr. Kramer—the reason I know, I have just gone through another trial involving the anti-trust laws, in the roofing industry—and the cases definitely hold that evidence bearing on the size, that bears on the size of the concern that is charged is competent.

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950 Mr. Kramer: I agree that that is the law generally. We think, Your Honor, that the provision of Section Six—

Mr. Combs: Sixteen.

Mr. Kramer: Whatever that section is, takes this union, or a labor organization, out from under that provision. Now that is our insistence here, Your Honor. We think it takes it out from under.

Generally that kind of evidence is admissible. We don't say by virtue of the Clayton Act it is admissible.

Then our second objection, the date of the ownership of these stocks, according to this evidence, was whatever it is, was July 1, July 31 —

Mr. Rowntree: July 1.

Mr. Kramer: July 1, 1958, which is practically at the end of the alleged period of the conspiracy, but for both reasons, we do insist that under the provisions of the Clayton Act, the general rule does not apply.

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951 The Court: The Court overrules the objection.

Mr. Rowntree: The answer to the interrogatory:

"Following is a list of the property, stocks, bonds, cash, and assets owned by the United Mine Workers of America as of July 1, 1958:

"\$2,153,279.50, Chertsey Corporation, loan; collateral 84,560 shares West Kentucky Coal Company stock."

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Mr. Rowntree: I think it might be well if I utilize this little chart here, because these are the figures that we are particularly interested in in this case.

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953 Mr. Combs: The only comment on the chart that counsel has, Your Honor, and I just have seen it, what I wanted to be careful about, and I'm sure counsel does, he says it is marked as the interests of the United Mine Workers in West Kentucky Coal and Nashville Coal Company.

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Now in citing the shares of stock, for instance to certain corporations that the Mine Workers have collateral, he leaves out the loan part that is contained in our answers to the interrogatories, which isn't a true reflection of
 954 what we have said.

If he wants to put some other connotation on it, it is different, but for instance, when they are talking about Chertsey collateral, that is all he says. Now the interrogatory shows that that was a loan to Chertsey. He's left the word "loan" out, and he doesn't truly reflect the interest, is my point.

The Court: Why don't you write "loan" in there, Mr. Rowntree?

957 Mr. Kramer: Oh, yes. I think these figures are about correct from a hurried look at this.

Here is the proposition. When you say X shares of something, some company, West Kentucky Coal as an example, and it says collateral for a loan made to somebody and then shows the amount of the loan, it does not show the equity that may exist in the X company, West Kentucky Coal Company. It doesn't show that.

What it shows here is that there was a loan of X dollars made to Mr. Colton or Mr. Eaton or somebody else, say a loan of two million dollars, whatever it may have been, and they put up a certain number of shares of West Kentucky Coal Company or some other company as collateral. That does not show the interest—what we are saying, so that we are clear—that does not show the interest United Mine Workers had in West Kentucky Coal or whatever other company it was whose stock was put up.

The Court: Ordinarily it would not have any interest in the coal company unless title to that stock was trans-
 958 ferred to the union.

Mr. Kramer: That is correct.

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The Court: And in order for that to be done, I take it the borrower would have to default on the loan.

Mr. Kramer: Ordinarily that is true, and what this is is simply—this list here simply shows that loans of X dollars was made to Cyrus Eaton or somebody else, and that Mr. Eaton put up so many shares of stock of West Kentucky as the collateral for the loan.

That is all it shows.

The Court: The owner of that stock continued to be the owner of it unless he defaulted on the loan and the title to the stock was divested out of the person who borrowed the money and vested in the union.

Mr. Combs: That is right, your Honor, and as pointed out awhile ago, that is the reason why I want the loan to be reflected because it is a question of fact here of whether or not the union controlled these companies and there is a difference in a loan and owning stock.

959 (Exhibit No. 48 was marked for identification and filed.)

The Court: You may put it on the board.

Mr. Rowntree: Continuing, the answer. Starting off again.

"\$2,153,279.50—Chertsey Corp.—loan—collateral, 84,560 shares West Kentucky Coal Co. stock.

"\$2,287,809.32—Sagamore-Summit Corp.—loan—collateral, 84,912 shares West Kentucky Coal Co. stock.

"\$2,513,895.18—Cyrus S. Eaton—loan—collateral, 90,600 shares West Kentucky Coal Co. stock.

"\$1,207,900.33—Tower Industries, Inc.—loan—collateral, 59,928 shares West Kentucky Coal Co. stock.

"\$1,006,875.00—Harrison Combs—loan—collateral, 25,000 shares West Kentucky Coal Co. stock.

960 "\$1,506,875.00—B. L. Colton—loan—collateral, 50,000 shares, West Kentucky Coal Co. stock.

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“\$2,354,522.04—85,400 shares West Kentucky Coal Co. stock.

“\$2,500,000.00—50,000 shares West Kentucky Coal Co. preferred stock.

“\$2,625,000.00—Chertsey Corp.—loan—collateral, 25,000 shares Nashville Coal Co., Inc., Stock.

“\$1,050,000.00—Sagamore-Summit Corp.—loan—collateral, 10,000 Nashville Coal Co., Inc., stock.

“\$1,050,000.00—Tower Industries, Inc.—loan—collateral, 10,000 shares Nashville Coal Co., Inc. stock.

“\$3,609,035.87—Cyrus Eaton—loan—collateral 102,427 shares C. & O. Ry. Co. stock.

“\$780,948.93—Chertsey Corp.—loan—collateral, 22,500 shares C. & O. Ry. Co. stock.

“\$4,390,009.88—124,927 shares C. & O. Ry. Co. stock.

“\$690,850.00—Cyrus Eaton—loan collateral, 20,000 shares Cleveland Elec. Illum. Co. stock.

961 “\$1,162,894.31—Cyrus Eaton—loan—collateral, 27,500 shares Kansas City Power & Light Co. stock.

“\$290,374.73—Cyrus Eaton—loan—collateral, 10,000 shares Union Electric Co. stock; 333 shares Hevi Duty stock.

“\$9,067,984.62—287,884 shares The National Bank of Washington stock.

“\$12,428,241.99—B. L. Colton—loan—collateral, 275,410 shares National Bank of Washington stock.

“\$1,666,700.00—16,667 shares American Coal Shipping, Inc., stock.

“\$1,666,700.00—A. H. Bull Steamship Co.—loan.

“\$666,680.00—A. H. Bull Steamship Co.—loan.

“\$550,000.00—Chertsey Corp.—Deposit on interest.

“\$13,355.06—C. R. Griffiths—loan.

“\$3,825,706.67—Anthracite Health and Welfare Fund—loan.

“\$1,128,950.73—Lewmurken, Inc.—loan.

“\$1,000,000.00—Charles Murchison—loan—collateral, Capital airline stock.

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"\$13,318,417.88—U. S. Treasury bonds — cost 962 value.

"\$2,163,782.57—Pension Fund Account.

"\$14,448,465.47—Amounts on deposit and cash on hand.

"\$500,000.00—District 18 Welfare and Retirement Fund —loan.

"\$2,771,000.00—Real Estate in Washington and District buildings owned by UMWA.

"\$75,000.00—Office equipment."

Total, \$96,471,254.10.

"NOTE: This does not include loans totalling \$20,671,966.88 made to District 50 through the years."

We turn to the back part of the interrogatories on page 38 of that set.

Mr. Combs: Still on interrogatory one?

Mr. Rowntree: That's right.

Turning to page 39; the question is on 38, I am sorry.

"It is requested that the cross-defendant, United Mine Workers of America, furnish a statement or produce the records showing in detail the nature of, and the purposes of the following loans or pledges of security which have been disclosed in the report filed by the Union pursuant to the Labor Management Reporting and Disclosure 963 Act of 1959:

"a. The \$15,000,000.00 of Union assets pledged as security for bank loans 'to companies engaged in coal mining or allied industries.' "

Answer: "Pledged as security for bank loan to West Kentucky Coal Company: \$5,200,000.00 United States Treasury Bonds—September 21, 1956.

"Purposes of the pledge—at the request of West Kentucky Coal Company,—United Mine Workers made this pledge in order that this company could expand its holdings and its operations to provide employment for employee members of United Mine Workers of America.

* * * * *

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Mr. Rowntree: There is on page 40 answer to Question 4, or item four.

"Pledge of security for bank loan to North Fork Coal Company: \$1,500,000.00"—

Mr. Kramer: We object to this, your Honor. If
964 your Honor please, if you have that in front of you
it is on page 40—because of the date, and this, your
Honor, could not under any theory of what has been said,
as I understand it, be admissible here.

A loan was made long after the date of the alleged conspiracy. It could not throw light on the act, or could not during the period claimed, and we object seriously, your Honor, to the introduction of this testimony.

Your Honor notes the date.

Mr. Rowntree: We have taken two depositions on this subject.

Mr. Kramer: That would not, your Honor, make it admissible, your Honor, what occurred on this financial deal which may have been long subsequent to the date of the termination of the alleged conspiracy.

The Court: Well, Mr. Rowntree, why do you want to get into matters that—

Mr. Rowntree: It does have to do with time subsequent to December 31, 1958, but we think that it shows a pattern of continuing conspiracy along the lines that we charge in this case with particular reference to the TVA market, and
the conduct of this particular transaction, I think
965 would be proof of the nature and existence of the
type of conspiracy we charge in the preceding years.

Mr. Kramer: It is not claimed that financial transactions of this type of this company were made prior to the termination of the conspiracy, therefore the theory even of showing a pattern could not apply.

This is a single, solitary transaction so far as this record is concerned that occurred five, six months, whatever it is, five and a half months, subsequent to the termination of the alleged conspiracy.

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Mr. Rowntree: We don't say that conspiracy terminated, your Honor. We say it is going on today, the same conspiracy. Of course, our company was run out of business.

966 The Court: This testimony has no bearing on the question of alleged damages, because it is beyond and outside of the alleged damage period. You will not consider this testimony as bearing on the question of alleged damages, but it may be considered on the question of whether there was a pattern set by the UMW and one or more of these coal companies, and whether or not that pattern was followed during the period that is involved in this lawsuit and whether it continued beyond the period involved in the lawsuit. That is the only purpose of admitting this type of testimony.

Mr. Rowntree: "Pledge of security for bank loan to North Fork Coal Company:

"\$1,500,000.00—Certificate of Deposit—May 11, 1959."

The Court: Who is the North Fork Coal Company?

967 Mr. Rowntree: "This company is located in the depressed coal areas of eastern Kentucky. It applied for a line of credit in the above amount, to be used for the purpose of purchasing coal leases and coal operating units in the Hazard Field of eastern Kentucky. The plans involved the promotion of coal land leases with reserves of 65,000,000 tons of minable coal. The purpose of the United Mine Workers in making this pledge was to try to expand the employment opportunities for its employee members in this depressed coal area."

"The \$20,000,000.00 loaned by the Union to individuals not named."

Paragraph 4-b:

"1. Loans in the total amount of \$14,685,116.99 were made to B. L. Colton:

968 "\$12,428,241.99—B. L. Colton, commencing on

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March 11, 1954—collateral 275,410 shares stock National Bank of Washington.

“\$2,256,875.00—B. L. Colton, commencing on October 28, 1955—collateral 75,000 shares stock West Kentucky Coal Company.

“The purposes of these loans were for investment and to enhance employment opportunities of the members of the United Mine Workers of America: Investments by Mr. Colton were primarily in stock in The National Bank of Washington and West Kentucky Coal Company.

“2. Loans in the total amount of \$6,122,930.05 were made to Cyrus S. Eaton:

“\$1,793,750.00—Cyrus S. Eaton, commencing February 7, 1951—collateral 50,000 shares Chesapeake & Ohio Railway Co. stock.

“\$1,815,284.87—Cyrus S. Eaton, commencing February 7, 1951—collateral 52,427 shares Chesapeake & Ohio Railway Co. stock.

“\$2,513,895.18—Cyrus S. Eaton, commencing October 9, 1951—collateral 90,600 shares West Kentucky Coal Co. stock.

“These loans were made primarily for the purposes of investment, and to enhance employment opportunities of its members. The principal investments by Mr. Eaton from these loans were in stock of the Chesapeake & Ohio Railroad Company and the West Kentucky Coal Company.”

We will skip the next item, and the next.

Paragraph 4-c: “The \$13,500,000.00 loaned by the Union to unnamed business enterprises.”

We will skip the first paragraph.

“2. Loans in the total amount of \$5,684,228.43 were made to Chertsey Corporation:

“\$780,948.93—Chertsey Corporation, commencing February 7, 1951—collateral 14,783 shares Chesapeake & Ohio Ry. Co. stock.

“\$2,750,000.00—Chertsey Corporation, commencing Sep-

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tember 5, 1955—collateral 25,000 shares Nashville Coal, Inc. stock.

“\$2,153,279.50—Chertsey Corporation, commencing October 9, 1954—collateral 42,280 shares West Kentucky Coal Co. stock.

“These loans were made primarily for the purposes of investment and to enhance employment opportunities of the members of the United Mine Workers of America.

“3. Loans in the total amount of \$3,387,809.32 were made to Sagamore-Summit Corporation:

970 “\$1,100,000.00 — Sagamore-Summit Corp. commencing on September 6, 1955—collateral 10,000 shares Nashville Coal, Inc. stock.

“\$2,287,809.32—Sagamore-Summit Corp. commencing on October 9, 1951—collateral 84,912 shares West Kentucky Coal Co. stock.

“These loans were made primarily for the purposes of investment and to enhance employment opportunities of the members of the United Mine Workers of America.

“4. Loans in the amount of \$2,307,900.33 were made to Tower Industries, Inc.:

“\$1,100,000.00—Tower Industries, Inc., commencing September 6, 1955—collateral 10,000 shares Nashville Coal, Inc. stock.

“\$443,223.90—Tower Industries, Inc., commencing October 9, 1951—collateral 25,300 shares West Kentucky Coal Co. stock.

“\$77,938.32—Tower Industries, Inc., commencing October 9, 1951—collateral 5,200 shares West Kentucky Coal Co. stock.

“\$18,847.04—Tower Industries, Inc., commencing October 9, 1951—collateral 1,300 shares West Kentucky Coal Co. stock.

971 “\$176,461.07—Tower Industries, Inc., commencing October 9, 1951—collateral 8,128 shares West Kentucky Coal Co. stock.

“\$491,430.00—Tower Industries, Inc., commencing October

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9, 1951—collateral 20,000 shares West Kentucky Coal Co. stock.

“These loans were made primarily for the purposes of investment and to enhance employment opportunities of the members of the United Mine Workers of America.

“5. Loans in the total amount of \$1,528,950.73 were made to Lewmurken, Inc. commencing on August 12, 1941. These loans were made primarily for the purposes of investment and to enhance employment opportunities of the members of the United Mine Workers of America.”

972 . Mr. Rowntree: May it please the Court and ladies and gentlemen of the jury, we take up Set No. 2 of interrogatories, addressed to the international union.

Mr. Kramer: You are reading Interrogatory No. 1?

Mr. Rowntree: “Interrogatory 1:

“Will you kindly attach hereto as collective Exhibit 1 to these interrogatories copies of the underlying papers by which the following transactions were consummated, or which represent the legal rights of the parties with respect to the following transactions; and if the bulk of these papers would impose unreasonable hardships on the Union, will you kindly make these papers available for inspection and copying; the transactions involved being as follows:

“(a) One Million Seven Hundred Ninety-Three Thousand Seven Hundred and Fifty Dollars (\$1,793,750) loaned to Cyrus S. Eaton —”

973 Mr. Kramer: Now, your Honor, that goes far as to disclose the name. Mr. Eaton is not a co-conspirator and is not charged with being a co-conspiration. It seeks to elucidate in answer from this the type of collateral, or as he says, the underlying papers that were involved in connection with these loans.

We say it is irrelevant and immaterial for any purpose, your Honor, and the facts should not be admitted.

Mr. Rowntree: If your Honor please, we charge that the company of which Mr. Eaton is chairman of the board is a

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co-conspirator, West Kentucky Coal Company. The nature of these transactions is what we go into, particularly in the deposition of Mr. Eaton, and we have to get at the fundamental papers to do it.

The Court: Objection overruled. Go ahead.

Mr. Rowntree: "(a) One Million Seven Hundred Ninety-Three Thousand Seven Hundred and Fifty Dollars (\$1,793,750) loaned to Cyrus S. Eaton, commencing February 7, 1951, secured by collateral of 50,000 shares Chesapeake & Ohio Railway stock, and the One Million Eight Hundred Fifteen Thousand Two Hundred Eighty-Four Dollars and Eighty Seven Cents (\$1,815,284.87) loaned to Cyrus S. Eaton commencing February 7, 1951, secured by collateral of 52,427 shares of Chesapeake & Ohio Railway Company stock.

"See attached Exhibit 1-A."

974 Mr. Combs: May it please the Court, I would like to add in addition to the objection, it discloses now, the question does that they are talking about transactions involving Chesapeake & Ohio Railway Company stock and that company has nothing to do with this case, and I don't think it is proper to introduce that. And is not claimed to be a conspirator.

Mr. Rowntree: We are seeking the relationship between Mr. Eaton and the international union, which—all of these transactions are in the same form. It is a rather unusual form. We have examined Mr. Eaton with respect to the style of these transactions. Many of our questions are concerning the style of the C & O transaction, which is identical with the type and style of the West Kentucky transaction on the face of the notes.

There is probative value in our questions with respect to the C & O stock upon the nature of these transactions, the nature of the interest that the United Mine Workers had under these transactions in West Kentucky Coal Company.

The form of the notes—I might say this, each of them has this type of provision in it, quoting—

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Mr. Kramer: Before we express that type, your
 975 Honor, I have no objection to your Honor taking it
 and looking at the provision so that your Honor may
 intelligently rule upon the objection.

Mr. Rowntree: I don't know whether you can read it.
 (Paper given to the Court.)

The Court: Objection overruled. Gentlemen, this
 976 is a part of the story, whatever bearing it may have
 on this alleged conspiracy, the jury may consider.

Mr. Rowntree: We will offer this as Exhibit 49. Let me
 designate this by numbers.

Exhibit 49 is a promissory note, February 7, 1958, exe-
 cuted by Cyrus S. Eaton, in the amount of \$1,793,750.00.

Mr. Rowntree: And also promissory note, January 26,
 1958, executed by Cyrus S. Eaton in the amount of \$1,815,-
 284.87.

Mr. Combs: May our objections run, Your Honor,
 through all of these notes that just had to do with the so-
 called collateral?

977 The Court: Yes, sir.
 (Exhibit No. 49 marked for identification and filed.)

The Court: Now, members of the jury, unless these notes
 are connected up in some way to the alleged monopoly or
 attempted monopoly that is charged in this cross action,
 then they will not be considered by the jury. This evidence
 will not be considered by the jury for any purpose unless
 the evidence has some bearing on this monopoly question
 or on the alleged restraint of interstate commerce.

In that connection it is a violation of the anti-trust laws
 for a union to aid or abet a private operator, private busi-
 ness to monopolize or attempt to monopolize an industry
 that is engaged in interstate commerce.

Now if this testimony or these exhibits have any bearing
 upon those issues, then the testimony may be considered by

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the jury. If not, if the jury finds that these notes, or this indebtedness to which the notes, or which the notes
 978 purport to evidence, have no relation to any alleged monopoly, or alleged restraint of trade upon the part of these alleged co-conspirators, then the testimony has no probative value in this case and will not be considered by the jury for any purpose.

Mr. Combs: And I would like to point out in connection with that that the C&O Railroad is a coal-hauling railroad, it hauls other products and passengers, and all. It is a big railroad. Its tariffs and all are set by the Interstate
 979 Commerce Commission. Its stock is on the board of Exchange, Securities and Exchange, big market board. These transactions, this is all counsel can show, and how in the world they can have anything to do with this case, I don't see.

The Court: If that is all that can be shown, they have nothing to do with the case. The Court so tells the jury at this time, because the Court can see no relationship between the Chesapeake and Ohio Railroad and the issues that are involved in this case. Unless something can be shown to connect the Chesapeake and Ohio up with the issues in this case, then we are taking up time for no —

Mr. Rowntree: There is also —

The Court: — shall I say legitimate purpose?

Mr. Rowntree: That is a good word.

There is also involved, Your Honor, the relationship between Mr. Eaton and the United Mine Workers of America, Mr. Eaton being the Chairman of the Board of the West Kentucky Coal Company and Nashville Coal Company, whom we say were used as a "fighting ship" in the coal industry in the Tennessee Valley to hurt the small operators.

The Court: Now you say Mr. Eaton, what connection does he have with West Kentucky?

980 Mr. Rowntree: He's Chairman of the Board.

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The Court: Eaton, Chairman of the Board of West Kentucky.

Now, what relation does he have with this other coal company you mentioned?

Mr. Rowntree: Nashville Coal Company, Chairman of the Board.

The Court: Chairman, Nashville Coal Company.

Now where is the Nashville Coal Company located? Sounds like it was located at Nashville. I thought they had a Bluegrass Company and walking horses?

Mr. Rowntree: It is located in West Kentucky in Madisonville, Kentucky, in the offices of West Kentucky Coal Company.

The Court: Where is the West Kentucky Coal Company located?

Mr. Rowntree: The West Kentucky Coal Company is located at Madisonville, Kentucky.

The Court: Madisonville, all right.

Mr. Rowntree: That is over in West Kentucky.

The Court: All right.

Mr. Rowntree: We offer as next exhibit, Exhibit 50; letter, United Mine Workers of America to the National Bank of Washington, without date.

The Court: Yes, sir.

981 (Exhibit No. 50 marked for identification and filed.)

982 Mr. Rowntree: I offer as the next exhibit note of B. L. Colton of March 15, 1954 in the amount of \$1,320,750.00; one note of B. L. Colton of April 26, 1954—

Mr. Combs: I just want to point out there are some notations on the copy of the notes, and that is the only one we have available and I think counsel will stipulate that the notations are not parts of the notes. I think it is for the information of the bookkeeper or somebody else. It is a pencil notation on the first one.

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Mr. Rowntree: —in the amount of \$9,170,487.00; and note dated September 15, 1955, \$2,754,105.00, all of which papers were previously marked as Exhibit 1-C to the set 2 of interrogatories. Exhibit No. 51.

Mr. Kramer: May it please the Court, the last note that counsel has tendered, dated September 15, 1955, has to do with collateral posted in the National Bank of Washington.

I do not think this transaction has anything, any
983 possible relation to this suit, and we are objecting to this. It is simply a transaction between Colton and the United Mine Workers of America and relates to stock in the National Bank of Washington.

The Court: It should not go into the record if it has no bearing on any of the issues, Mr. Rowntree.

Mr. Rowntree: The National Bank of Washington is the bank which made some loans in this record in the coal industry.

It is our position that the United Mine Workers of America owned a very substantially large block of the National Bank of Washington Stock; and that at one time at least, that it was the holder of over 50 per cent of the stock until these transactions in which they loaned the money to Mr. Colton, the nature of which we explored in the deposition of Mr. Colton.

The Court: Who is Mr. Colton?

Mr. Rowntree: He is president of the National Bank of Washington. It is a rather complicated transaction.

The investment powers of the United Mine Workers of America include consideration of the investment powers of this National Bank of Washington.

984 Mr. Combs: May I make this observation, your Honor. The National Bank of Washington was chartered by an Act of Congress. It is one of the oldest banks in Washington. It is controlled by the Federal Reserve, the same as any other bank, and the fact that the United Mine Workers may own or may not have owned stock in the National Bank of Washington under those conditions, I

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do not see how it could have any relevancy to this case.

Mr. Rowntree: The National Bank of Washington made loans to the West Kentucky Coal Company.

Mr. Combs: Of course, it is a public institution. It makes loans to anybody that has the collateral.

Mr. Rowntree: It makes loans which are supported by pledges of United Mine Workers of America assets. There is close affiliation between the bank and the union.

Mr. Combs: That has nothing to do with this particular transaction. This is just a straight out transaction between Mr. Colton and the United Mine Workers and the Bank of Washington stock is pledged for the loan of Colton.

Mr. Rowntree: We are investigating the power of the union, your Honor, to have an economic force in the industry, the extent to which it has used that economic force and this is part of it, a substantial part of it.

The Court: Overruled. Go ahead.

(Exhibit No. 51 was marked for identification and filed.)

Mr. Rowntree: We offer as the next exhibit, No. 52, note of Mr. Colton dated December 30, 1959 in the amount of \$750,000; note dated October 28, 1958 in the amount of \$631,875.00; note dated March 1, 1956, signed by Mr. Colton in the amount of \$875,000.00.

Mr. Kramer: One of these notes I notice, if I did not misunderstand the date, was long subsequent to the date of any alleged conspiracy, and for that additional reason as heretofore given we except to it.

The Court: Mr. Rowntree, are these personal transactions between Mr. Colton and the bank?

Mr. Rowntree: These transactions deal with the purchase of West Kentucky stock with the funds of the United Mine Workers.

The Court: Well, overruled, gentlemen.

(Exhibit No. 52 was marked for identification and filed.)

987

Mr. Rowntree: We offer as the next exhibit, No. 53, a note in the amount of \$1,006,875, concerning se-

